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**AT&T TEXAS' RESPONSE TO UTEX'S EXCEPTIONS TO THE  
ARBITRATORS' PROPOSAL FOR AWARD**

COMES NOW Southwestern Bell Telephone Company d/b/a AT&T Texas ("AT&T Texas") and files this Response to UTEX's Exceptions to the Arbitrators' Proposal for Award.

**I.  
EXECUTIVE SUMMARY**

UTEX's Exceptions to Proposal for Award ("UTEX's Exceptions") are largely impermissible requests to add contract language that was not presented in UTEX's petition or in AT&T Texas' response and, therefore, was not a part of the arbitration hearing. UTEX's request that these new contract terms be made a part of the interconnection agreement is prohibited both by §§ 251/252 of the Federal Telecommunications Act ("FTA") as well as by the Arbitrators' rulings that established how this case would be tried.

In Order No. 27, the Arbitrators ruled: "A state commission acting pursuant to FTA § 252(b)(1) may only consider those issues specifically presented by the parties in

their petition and response.<sup>1</sup> The *Global Naps* decision the Arbitrators relied on in Order No. 27 makes this exact holding, citing 47 U.S.C. § 252(b)(4)(A), which explicitly provides that the “State commission shall limit its consideration of any petition [for arbitration] ... (and any response thereto) to the issues set forth in the petition and in the response.”

Consistent with this directive in § 252(b)(4)(A), the Arbitrators in Order No. 30 limited the parties to litigating the contract language identified in that order, allowing each party to add contract language only if it could support that additional contract language by proving a change of law. In Order No. 32, the Arbitrators denied UTEX a requested extension to submit additional contract language, holding that UTEX’s request “would not allow the Panel to issue an order regarding the contract documents and DPL issues at issue in this proceeding until after direct testimony is due.”<sup>2</sup> As the Arbitrators correctly reasoned, “[w]ithout knowing the issues in the case and the contract language in dispute, the parties would not be able to prepare testimony effectively.”<sup>3</sup>

UTEX now unfairly and improperly seeks to inject into this case new contract language *after* the testimony has been filed, the hearing conducted, the briefing submitted, and the Proposal for Award issued. UTEX further proposes “workshops” “after (or perhaps even before) the final award is issued” to “identify and resolve”

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<sup>1</sup> *Global Naps, Inc. v. Verizon New England*, 444 F.3d 59, 62 (1<sup>st</sup> Cir. 2006), Order No. 27 at 1, n. 2, which states, “The state commission must limit its consideration of the agreement to the matters specifically presented in the petition for arbitration and in the response.”

<sup>2</sup> Order No. 32 at 3-4.

<sup>3</sup> *Id.* at 4.

“problems and conflicts.”<sup>4</sup> UTEX’s disregard for the clear limitations of § 252(b)(4)(A) and the Arbitrators’ rulings implementing those limitations is astounding. The Arbitrators should reject *all* of UTEX’s unsolicited new contract language on § 252(b)(4)(A) grounds alone. In the event the Arbitrators consider the merits of UTEX’s proposals, they should reject them on that basis as well.

## **II.**

### **RESPONSE TO UTEX’S EXCEPTIONS (PP. 4-12)**

In an effort to present some organization to the exceptions filed by UTEX, AT&T Texas responds to UTEX’s points in this brief by tracking the pages on which the issues appear in UTEX’s filing. AT&T Texas also includes as its response an attachment of the DPL exceptions raised by UTEX (UTEX Exceptions to Proposal for Award, Attachment B) and includes a column reflecting AT&T Texas’ response.<sup>5</sup>

#### **A. Response to UTEX’s “Exceptions to Conflicting Language between the PFA and its Attachments.” (pp. 4-6)**

In this exception, UTEX makes sweeping claims that what the Arbitrators ruled in the Proposal for Award is not properly reflected in the contract language the Arbitrators awarded in the Matrix. UTEX does not attempt to address any particular conflict here but, instead, asserts that it has pointed out the conflicts in UTEX Attachment B, an 83-page matrix addressing most of the DPL Issues in the case. That matrix consists largely of a rehash of UTEX’s failed arguments and refers to purported “conflicts” only in canned language used throughout the matrix. AT&T Texas responds to the arguments in the matrix in a column it has created in the matrix for AT&T Texas’ position. For the most part, UTEX is wrong.

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<sup>4</sup> UTEX’s Exceptions at 17.

<sup>5</sup> Attached hereto as Attachment A.

UTEX's request that the Arbitrators approve language that would make UTEX's proposed "Network Interconnection Methods Rider" – Attachment A to UTEX's exceptions – trump all other language in the agreement is improper. Both Attachment A and the "trump" language are impermissible additions to the contract for the reasons discussed in the Executive Summary: § 252(b)(4)(A) and the Arbitrators' rulings do not allow the parties to inject new contract terms at this stage. In addition, as shown below, UTEX's Attachment A is replete with language that is contrary to the Arbitrators' rulings and that plainly violates § 251(g), which preserves the access charge regime until the FCC dismantles it.

**B. Response to UTEX's Exception to Arbitrators' finding limiting fiber meet points to AT&T Texas' offices and tandems. (pp. 6-11)**

UTEX's argument at pages 6-11 that the Arbitrators should withdraw their ruling that limits AT&T Texas' interconnection obligations to interconnecting at fiber meet points located at AT&T Texas' offices and tandems is a meritless challenge to well-established law. The Arbitrators correctly followed the Commission's determinations in Docket No. 28821. The language as proposed by AT&T Texas is consistent with the Commission's Final Award in Docket No. 28821.<sup>6</sup> In Docket No. 28821, the Commission rejected the very argument UTEX makes here, is that AT&T Texas is required to interconnect with UTEX at "carrier hotels"<sup>7</sup>.

The Commission finds that CLECs may interconnect with SBC Texas only within SBC Texas's network. Furthermore, *the Commission finds that carrier hotels, outside plant facilities and customer premises are not a part of SBC Texas's network.* ... The *Triennial Review Order* clarified what

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<sup>6</sup> Docket No. 28821, *Arbitration of Non-Costing Issues for Successor Interconnection Agreements to the Texas 271 Agreement*, Network Architecture/Interconnection-Jt. DPL-Final, SBC Issue No. 1, CLEC Coalition NIA-1, at 1 (Feb. 23, 2005). See also Joe Boyd Direct at 16.

<sup>7</sup> UTEX's Exceptions at 8.

constitutes the ILEC's network. Specifically, in paragraph 366, the FCC concluded that:

We find that transmission facilities connecting incumbent LEC switches and wire centers are an inherent part of the incumbent LEC's local network Congress intended to make available to competitors under section 251(c)(3). On the other hand, we find that transmission links that simply connect a competing carrier's network to the incumbent LEC's network are not inherently a part of the incumbent LEC's local network. Rather, they are transmission facilities that exist *outside* the incumbent LEC's local network.

Thus, the FCC found that links such as entrance facilities, used for connecting ILEC and CLEC networks, are not part of the ILEC's network.<sup>8</sup>

The Arbitrators should follow the rulings in Docket No. 28821.

On October 14, 2010, a group of amici filed a brief effectively arguing that the Arbitrators should ignore the Commission's precedent in Docket No. 28821 and require interconnection outside of AT&T Texas' central office and tandem switches. Misinterpreting AT&T Texas' discovery responses in another docket, these amici have also wrongly claimed that AT&T Texas has SIP interconnection capabilities in its network. AT&T Texas will respond to amici's filing by 3:00 p.m. on Thursday, October 21, 2010.

UTEX's argument that the Arbitrators' adoption of AT&T Texas' proposed language for NIM 1-3 improperly prohibits UTEX from establishing trunk groups for the exchange of ESP traffic, SS-7 signaling, Jointly Provided Access, and transit traffic is misconceived for several reasons.

First, the Proposal for Award does not authorize the exchange of SS-7 signaling over trunks. SS-7 signaling is not provided over trunk groups: it is an out-of-band

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<sup>8</sup> Docket No. 28821, Arbitration Award on Track 1 Issues at 18-19 (Feb. 23, 2005) (emphasis added).

signaling that accompanies local interconnection trunk groups and gives instructions for routing of the traffic.<sup>9</sup> The Proposal for Award merely applies the FCC's rule that "an ILEC must allow a requesting carrier to interconnect with the ILEC's "[o]ut-of-band signaling transfer points necessary to exchange traffic at these points and access call-related databases."<sup>10</sup> The language UTEX proposes is both improper and impermissible because of the restrictions of § 252(b)(4)(A) and Order No. 30.

Second, the contract language the Arbitrators approved *does* provide for Meet Point Billing ("MPB") in the event the parties jointly provide access. It is found in § 5.4 of Appendix ITR. Under these provisions, which are much like those in UTEX's current ICA, UTEX would need to (1) establish a separate trunk group dedicated to MPB traffic and (2) establish MPB arrangements to provide Switched Access Services to IXC via a Party's access tandem switch, in accordance with the MPB guidelines adopted by and contained in the Order and Billing Forum's ("OBF") Multiple Exchange Carrier Ordering and Design ("MECOD") and Multiple Exchange Carrier Exchange Access Billing ("MECAB") documents.<sup>11</sup> The trunk would route exchange access traffic between UTEX's end users and IXCs via AT&T Texas' access tandem.

UTEX's proposed language at issue in the hearing mischaracterized its delivery of long-distance traffic as jointly provided access and, therefore, was properly rejected.

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<sup>9</sup> Proposal for Award at 98.

<sup>10</sup> *Id.* at 91-92, quoting 47 C.F.R. § 51.305(a)(2)(v).

<sup>11</sup> Docket No. 33323, *Petition of AT&T Texas for Post-Interconnection Dispute Resolution With UTEX Communications Corp., Under the FTA Relating to Billing Disputes on UTEX's Termination of Traffic and LNP Queries*, Arbitration Award at 114 (AT&T Texas describing the meet point billing arrangement available under the parties' current ICA) and at 116 (the Arbitrator accepting AT&T Texas' position and citing the pertinent ICA provisions).



Third, the Arbitrators approved all of the language needed for transit traffic, requiring AT&T Texas to provide transit service to UTEX and authorizing UTEX to provide transit service if direct interconnection between AT&T Texas and the third party carrier is unavailable.<sup>12</sup> Separate trunks are not needed to accomplish this. Moreover, AT&T Texas either has or is willing to make available direct interconnection with every carrier lawfully operating in the State of Texas. Therefore, UTEX is never going to be a transit provider under an agreement with AT&T Texas.

Fourth, AT&T Texas agrees with UTEX that NIM 1-3 does not allow for creation of separate trunks for ESP traffic. The Arbitrators improperly created its “ESP traffic” category and no such trunks would be lawful for the reasons stated in AT&T Texas’ exceptions and also for the reasons stated in the Executive Summary regarding the impropriety of adding at this stage new contract language that neither party proposed.

**C. Response to UTEX’s Exception regarding alleged “Inconsistency within PFA and PFA Attachment B and in Prescribed Language.” (pp. 11-12)**

UTEX’s argument here does not elaborate on any of its alleged “inconsistencies” other than its discussion of the Arbitrators’ inconsistency in using UTEX’s term “local traffic” in some places and its references elsewhere to “§ 251(b)(5) traffic.”<sup>13</sup> AT&T Texas agrees the Arbitrators are inconsistent in this regard and, as set out in AT&T Texas’ exceptions, requests that the Arbitrators use the term “§ 251(b)(5) traffic” as AT&T Texas proposed.

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<sup>12</sup> Proposal for Award at 63-64.

<sup>13</sup> UTEX’s Exceptions at 11-12.

**III.**  
**RESPONSE TO UTEX’S “EXCEPTIONS TO PFA AWARDS AND LANGUAGE  
WITHOUT IMPLEMENTATION LANGUAGE” (PP. 12-14)**

**A. SS-7 Signaling (p. 12)**

In its complaint about lack of contract language for SS-7 signaling, UTEX again misreads the Proposal for Award, misconstruing the Arbitrators’ ruling to give UTEX a right to “interconnect with AT&T’s signaling network and databases and to establish B-Links without recourse to AT&T’s tariffs.”<sup>14</sup> The Proposal for Award did precisely the opposite, stating: “to the extent UTEX seeks access to AT&T Texas B-links, UTEX may not purchase those network elements at TELRIC prices.”<sup>15</sup> Thus, consistent with the Commission’s ruling in Docket No. 33323,<sup>16</sup> the Arbitrators are requiring UTEX to purchase B-links out of AT&T Texas’ tariff and have said nothing in the Proposal for Award that would attempt to undo the FCC’s declassification of SS-7 signaling or LIDB databases as UNEs. The Arbitrators merely said that the FCC’s TELRIC pricing rules apply to interconnection, citing 47 C.F.R. § 51.501(a). Rule 51.501(a) says precisely that: “These rules in this subpart apply to the pricing of network elements, interconnection, and methods of obtaining access to unbundled elements.” But those pricing rules do not override the FCC’s decisions to declassify network elements, and whenever network elements are declassified, they are available only through tariffed pricing.

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<sup>14</sup> *Id.* at 12.

<sup>15</sup> Proposal for Award at 92.

<sup>16</sup> Docket No. 33323, Arbitration Award at 26.

In any event, as UTEX admits, there is no contract language for what UTEX wants. Pursuant to § 252(b)(4)(A) and Order No. 30, UTEX cannot have the “draft implementation language” for SS-7 signaling it belatedly proposes in Attachment A.

**B. JPA Trunking (p. 13)**

In this section, UTEX repeats its argument for jointly provided access trunking. As previously shown,<sup>17</sup> the Arbitrators addressed jointly provided access in § 5.4 of the Appendix ITR and no additional provisions are needed. In addition, per § 252(b)(4)(A) and Order No. 30, UTEX cannot create new contract language at this stage of the proceeding.

**C. Transit (p. 14)**

In this section, UTEX repeats its argument that it needs contract language for transit trunking. As previously shown,<sup>18</sup> the Arbitrators approved the necessary language for transit, consistent with Docket No. 28821. The Arbitrators did not require separate trunking for transit traffic, and no such trunking is needed. In addition, per § 252(b)(4)(A) and Order No. 30, UTEX cannot create new contract language at this stage of the proceeding.

**IV.**

**RESPONSE TO UTEX’S EXCEPTIONS REGARDING THE ARBITRATORS’  
INSTRUCTIONS TO DRAFT CONTRACT LANGUAGE (PP. 14-18)**

**A. The Arbitrators have no authority to order the drafting of new contract language.**

UTEX has excepted to the Arbitrators’ instructions that the parties negotiate and submit contract language for (1) auditing ESP traffic, (2) compensation for 500 service,

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<sup>17</sup> Discussion *infra* at 8.

<sup>18</sup> *Id.* at 8-9.

and (3) OSS. AT&T Texas has excepted to these instructions as well, but for very different reasons: the Arbitrators have no authority to order negotiation and creation of new contract terms at this stage in the proceeding.

Sections 251 and 252 of the FTA have a defined procedure for the negotiation and arbitration of interconnection agreements. Under § 252(a) and (b), the prescribed time for negotiating terms is the first 134 days after a CLEC requests an agreement. Between the 135<sup>th</sup> to the 160<sup>th</sup> day after the ILEC receives a negotiation request, either party may then petition for mandatory arbitration. The 10-day period between the filing of the Proposal for Award and the filing of exceptions to that Proposal is neither an appropriate nor a permissible period for additional mandated negotiations.

Further, pursuant to the restrictions in § 252(b)(4)(A), the Arbitrators cannot require negotiation of these new terms because they address contract issues the parties did not arbitrate. UTEX did not request (1) a compensation system based on the location of its customers' Points of Presence or (2) any compensation system for 500 numbers. UTEX wanted, instead, to avoid access charges on any and all traffic "to or from" an ESP and to get 500 access service free of charge. The Arbitrators have rejected both of those arguments and cannot now direct the parties to construct an agreement on terms UTEX never placed in issue. The prohibition exists for the additional OSS language the Arbitrators have requested: no one proposed it.

**B. The Arbitrators should reject UTEX's Attachment A – NIM Rider.**

The Arbitrators should reject UTEX's Attachment A both because it violates § 252(b)(4)(A) and Order No. 30 and because it proposes contract language that conflicts with many of the Arbitrators' rulings. Attachment A is basically a rewrite of the NIM Attachments. UTEX falsely suggests it is submitting Attachment A in compliance

with the Arbitrators' instructions to address the three discrete pieces of contract terms described above. The Arbitrators, however, did not request the parties to submit entirely new contract language for NIM; they merely asked for audit language regarding their ESP/POP test, compensation terms for 500 traffic, and additional OSS terms. The only portions of UTEX's Attachment A that are responsive to those requests are pages 6-7 (audit language) and scattered references to 500 traffic that mischaracterizes that traffic so as to avoid having to pay any compensation for AT&T Texas' 500 access service.

UTEX misreads PUC Proc. R. 21.95(t)(3)(A) in arguing that rule requires the Arbitrators to adopt Attachment A. To the contrary, Rule 21.95(t)(3)(A) supports AT&T Texas' position that UTEX is *precluded* from obtaining any of these new terms, including the ones solicited by the Arbitrators. Rule 21.95(t)(3)(A) requires the Proposal for Award to include "a ruling on each of the issues presented for arbitration by the parties, including specific contract language." Consistent with § 252(b)(4)(A) of the FTA, Rule 21.95(t)(3)(A) contemplates that the parties will not get contract terms that are not placed in issue by the parties.

The Arbitrators cannot create new contract terms as part of their authority to offer an "independent resolution of the issues."<sup>19</sup> The authority to offer an "independent resolution" must be read in the context of § 252(b)(4)(A). Such an independent resolution must be limited to the confines of the contract language the parties have proposed and the issues they have litigated. As even UTEX concedes, the Arbitrators'

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<sup>19</sup> PUC Proc. R. 21.95(t)(1).

proposed compensation scheme for ESP traffic is “novel.”<sup>20</sup> A “novel” compensation scheme should not be the basis of new contract terms that AT&T Texas’ never had an opportunity to address in testimony or briefing. Had UTEX’s customers’ Points of Presence as a mechanism for jurisdictionalizing calls been raised as an issue in this case, AT&T Texas would have presented testimony and briefing to refute it. Fundamental concepts of due process as well as the limitations of § 252(b)(4)(A) and Order No. 30 prohibit the Arbitrators from crafting this “novel” compensation scheme and instructing the parties to draft contract language to provide an auditing system to implement it.

The Arbitrators similarly lack authority to order 500 number service be provided under the terms of this interconnection agreement. UTEX has *no* proposed contract language for 500 numbers. In fact, UTEX did not even *have* these numbers when it filed its petition in this case in 2005.<sup>21</sup> If the Arbitrators are to be consistent with their prior rulings in Orders No. 27 and 30, they should not allow introduction of contract terms for 500 service at this late date.

In the event the Arbitrators consider the audit provisions in UTEX’s Attachment A, the Arbitrators should reject them. UTEX’s audit provisions fail to address in any meaningful way how AT&T Texas could determine whether the traffic UTEX would route over its “ESP” trunk meets the requirements the Arbitrators have imposed in the ESP/POP test. UTEX says generally that AT&T Texas has “Auditing Rights” and that “UTEX will make available to AT&T all of the above,” referring to language describing

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<sup>20</sup> UTEX’s Exceptions at 19 (“UTEX recognizes that the Arbitrators have proposed a novel approach to enforce accountability on ESP traffic.”)

<sup>21</sup> Feldman Rebuttal at 19 (describing the “origins and history” of UTEX’s “500 service” as beginning in 2006).

what UTEX will do to satisfy the test. Those terms fail to define with specificity what AT&T Texas will be able to inspect and clearly fail to provide mechanisms to audit UTEX's customers, whose traffic routing practices are central to the Arbitrators' ESP/POP test. Instead, UTEX proposes that it will solicit from its customers "a written explanation as to what qualifies the customers [sic] traffic and shall keep such an explanation for inspection."<sup>22</sup>

As set out in AT&T Texas' special exceptions and proposed audit language, it is essential that AT&T Texas have the opportunity to physically inspect the facilities and operations of both UTEX and its customers in order to determine whether UTEX's traffic qualifies. UTEX's language does not provide for this but, instead, states that UTEX will maintain databases containing the necessary information. Providing AT&T Texas with access to databases that may or may not contain accurate, truthful information is not an appropriate means to audit UTEX and its customers.

If the Commission considers UTEX's proposed language for 500 numbers, the Commission should reject that language as well. For the reasons set out in AT&T Texas' exceptions, the only compensation terms appropriate for the 500 service AT&T Texas would provide to UTEX are those in AT&T Texas' 500 access service tariff. In addition, UTEX fails to comply with the Arbitrators' rulings regarding compensation and CPN requirements, proposing to treat 500 numbers as having valid CPN when, as non-geographic numbers, they do not (see p. 18, § 5.3) and proposing to treat the routing of them as Jointly Provided Access (p. 19, § 5.5).

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<sup>22</sup> UTEX Attachment A at 6.

UTEX's Attachment A is rife with other provisions that are inconsistent with the Arbitrators' rulings in the Proposal for Award and/or with federal law. Identified below are just examples:

- Does not limit AT&T Texas' interconnection obligations to interconnecting at fiber meet points located at AT&T Texas' offices and tandems (§§ 2.5, 3.3.7, 3.4.3, 4.2.2.2(b), etc.);
- Requires establishment of trunks for "mutual exchange of SS-7 signaling traffic" and access to network elements that have been declassified (e.g., B-links, databases for LIDB, Caller Name, 8YY) at TELRIC pricing (§ 2.5.3);
- Orders AT&T Texas to "establish B-Links to signal with UTEX as a peer," presumably seeking to get B-links for free, contrary to the Arbitrators' ruling here and in Docket No. 33323 that B-links can only be purchased at tariffed prices (§§ 3.4.4, 4.2.1.2(d), 4.2.2.2(d), etc.);
- Allows UTEX to route traffic *for free* "until new systems and trunks are in place," thereby permitting UTEX to use its existing trunks *indefinitely* to route traffic without paying either access charges or reciprocal compensation (§§ 3.3.9, 3.4.5, 4.2.1.2(e), etc.);
- Merely requires the UTEX POP and the UTEX Customer POP to be in the same calling area but fails to address the actual routing of the traffic and does not require the traffic to be routed through those POPs (§ 3.3.3);
- Instead of requiring UTEX to meet the Arbitrators' tests for ESP traffic, "deems" such traffic exempt "[b]ecause special conditions exist to audit UTEX's business practices" (§ 3.5.5);
- In conjunction with granting itself the right to "deem" traffic exempt, provides audit terms that will not enable AT&T Texas to determine the true nature of UTEX's traffic and, if AT&T Texas disputes UTEX's "deeming," relegates resolution of the disputed issue to the FCC instead of to this Commission, as required by §§ 251/252 (pp. 6-7);
- Has incomprehensible terms for Optional EAS, allowing UTEX to "categorize" the traffic as it chooses (see § 4.2.2.1(c)(i), which states call "will be deemed a 'OEAS' ... if "it must not be categorized by UTEX as either FX or Transit");



- Allows UTEX to circumvent the Arbitrators' ruling that AT&T Texas has no obligation to deliver traffic to UTEX for transit to a third party carrier when AT&T Texas has available a means for direct interconnection with that carrier (§ 4.2.5(e));
- Provides that non-geographic 500 numbers will be treated "no differently than other geographic NANPA assigned to UTEX," thereby improperly redefining 500 numbers as valid CPN (§ 5.3);
- Treats all 500 and 8YY calls as Jointly Provided Access, thereby improperly avoiding charges properly associated with the 500 and 8YY access services AT&T Texas provides (§§ 5.4.1, 5.5.1);
- Orders trunk groups for SS-7 signaling when SS-7 signaling is out-of-band signaling – a link – not a trunk and impermissibly orders a common Fiber Meet, contrary to the Arbitrators' rulings on fiber meet points (§§ 6.0 – 6.2.2);
- Provides TELRIC pricing for SS-7 signaling, in conflict with the FCC's declassification of SS-7 signaling as a UNE (§ 6.6.1);
- Provides TELRIC pricing for accessing AT&T Texas' databases that have been declassified as UNEs (§ 6.6.2);
- Scatters language addressing OSS throughout the document, contrary to the Arbitrators' rulings that OSS is to be addressed in a single, comprehensive document (§§ 3.1.1.1, 6.3, etc.).

In sum, UTEX's Attachment A represents a gross overreaching by UTEX that ignores controlling federal law, Commission precedent, and the Arbitrators' rulings in the Proposal for Award. UTEX's conduct has but one intention: to confuse and mislead the Arbitrators into reaching legally untenable results. The Arbitrators should reject Attachment A in its entirety.

**C. The Arbitrators should reject UTEX's Attachment C – OSS Language.**

The Arbitrators should also reject UTEX's Attachment C, which contains UTEX's impermissible new contract language for OSS. In their decision, the Arbitrators correctly approved AT&T Texas' proposed OSS terms and rejected UTEX's terms because UTEX failed to justify them, scattered them throughout the ICA, and did not

provide comprehensive language.<sup>23</sup> As the Arbitrators noted, “AT&T Texas’s terms describe OSS access procedures that were developed through collaborative industry processes to serve hundreds of participating CLECS, and those terms provide nondiscriminatory access to AT&T Texas’s OSS functions.”<sup>24</sup> UTEX’s Attachment C proposes new terms, ignoring the Arbitrators’ rulings.

The sole instruction the Arbitrators gave with respect to OSS was to “provide UTEX with procedures for pre-ordering, ordering, provisioning, and other OSS functions for products and services to which UTEX is entitled under this ICA and for which such procedures do not currently exist within 120 days of UTEX’s request for such procedures.”<sup>25</sup> The Arbitrators explicitly stated that “AT&T Texas may use the BFR process and the parties may establish interim procedures, including manual ordering, within the 120 day period until permanent procedures are put in place.”<sup>26</sup> UTEX proposes language in its Attachment C that ignores the Arbitrators’ ruling approving the use of the BFR and completely ignores the time frame it takes to develop pre-ordering, ordering, provisioning, and other OSS functions for products and services that do not currently exist.

UTEX’s proposed Attachment C must be completely rejected for several reasons.

First, Attachment C attempts to establish UTEX-specific OSS language that is either completely new to the proceeding and therefore violates the limits of

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<sup>23</sup> Proposal for Award at 117.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 118.

<sup>26</sup> *Id.*

§ 252(b)(4)(A) or that is a retread of the UTEX language the Arbitrators have already rightfully rejected.

Second, Attachment C contains pre-ordering and ordering time frames that ignore the performance measurement business rules to which all other CLECs have agreed. Attachment C proposes *new* performance measurements (“PMs”) and Firm Order Confirmation (“FOC”) time frames. For example, on page 1, UTEX proposes:

(a) Within 5 business days, AT&T shall FOC the order and confirm the physical address and location. Once an order is FOCed the parties shall agree upon whether the connection will be via jumper cable or splice and who will perform the actual physical connection.

FOC time frames for products and services available under the terms of the parties’ agreement were established during the PM collaboratives and all of AT&T Texas’ processes have been designed to comply with those time frames. UTEX should not be able to dictate special FOC time frames for itself that AT&T Texas may or may not be able to meet.

Third, Attachment C would require AT&T Texas to provide UTEX with additional pre-ordering and ordering notifications that no other CLEC receives and that the Arbitrators have already rejected. UTEX’s Attachment C provides:

Order Rejects – Order Rejects are to be sent to the sender via the same method in which the order was sent. After a reject is sent, *an e-mail is to be sent within 2 business hours to the order contact or other agreed to mailbox informing them of the rejected order and what is necessary to correct the problem.* This e-mail is to contain the PON(s) associated with the rejected order(s).

The contract language UTEX proposed with the DPL states:

Order Rejects are to be sent to the sender via the same method in which the order was sent. After a reject is sent, an e-mail is to be sent within 1 business hour to the order contact or other agreed to mailbox informing them of the rejected order and what is necessary to correct the problem. This e-mail is to contain the PON(s) associated with the rejected order(s).

Thus, this proposed Attachment C language is virtually the same language that UTEX proposed and the Arbitrators rejected.

Fourth, Attachment C does not clearly state that all permanent OSS processes are not necessarily electronic/mechanized. UTEX's proposed Attachment C may lead one to believe that "permanent procedures" automatically equal electronic/mechanized procedures. That is not the case. A manual process may indeed be a permanent process and it is likely that any "one off" pre-ordering or ordering process, once developed, would remain manual. It simply makes no sense to expend capital developing a mechanized solution for a single CLEC or for a single product that only one CLEC may or may not order. Attachment C should be rejected because it does not clearly state this fact and might lead to confusion by the parties and unnecessary Commission complaints.

Fifth, Attachment C provides for pre-ordering, ordering and provisioning procedures for elements that are not available via the ICA. At paragraphs 1.1.4 and 2.1.2, proposed Attachment C offers terms for SS-7 B-Links. The Proposal for Award, however, plainly held that "to the extent UTEX seeks access to AT&T Texas B-links, UTEX may not purchase those network elements at TELRIC prices."<sup>27</sup> Thus, consistent with the Commission's ruling in Docket No. 33323,<sup>28</sup> the Arbitrators are requiring UTEX to purchase B-links out of AT&T Texas' tariff.

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<sup>27</sup> Proposal for Award at 92.

<sup>28</sup> Docket No. 33323, Arbitration Award at 26.

**V.**  
**RESPONSE TO UTEX'S EXCEPTION**  
**COMPLAINING OF "ISSUES NOT RESOLVED." (PP. 18-23)**

The Arbitrators properly declined to rule on UTEX's "issues" that did not relate to or resolve specific contract terms. UTEX relies on § 252(b)(4)(C) of the FTA for its argument that the Arbitrators were required to rule on its "UTEX Issues 7, 14-18, and 40. Section 252(b)(4)(C), however, is consistent with the limitations of § 252(b)(4)(A), properly restricting state commissions' authority to resolving the issues "set forth in the petition and the response." UTEX created UTEX Issues 1 through 60 just last spring: they do not appear in either UTEX's petition or AT&T Texas' response and do not relate to the contract language permitted by Order No. 30. The Arbitrators were entitled to disregard every one of them.

Moreover, even if these Issues had appeared in UTEX's petition, the Arbitrators properly did not address them because their resolution did not determine any contract language. Section 21.95(a)(5) of the Commission's procedural rules provides that a petition for arbitration must include, among other things, "(D) proposed contract language *for each unresolved issue*." (emphasis added.) Similarly, subsection (b) provides that the non-petitioning party's response to an arbitration petition must include "alternative proposed contract language." The Commission's rules thus recognize that if a question is not about competing contract language, it is not an unresolved issue for arbitration.

Similarly, § 21.95(t)(1)(A) requires the Arbitrators to include in the Proposal for Award "a ruling on *each of the issues* presented for arbitration by the parties, *including specific contract language*." (emphasis added.) Likewise, § 21.95(t)(3) requires that the Arbitration Award itself include "specific contract language" for each of the issues

presented for arbitration. The Commission's rules could hardly make clearer that, in order for a question to be an "unresolved issue" subject to arbitration, the answer to the question must determine contract language to be included in the parties' interconnection agreement.

Sections 251 and 252 also recognize that open issues are disagreements about contract language. Section 251(c)(1) requires ILECs "to negotiate ... the particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (5) of subsection [252](b) and this subsection [252(c)]." The negotiation, then, is about what words will be included in the interconnection agreement – the "particular terms and conditions." Thus, when the negotiations do not yield a complete agreement, the disagreements – what the FTA calls "open issues" – are, necessarily, disagreements about what those terms and conditions should be. Again, if there is not a disagreement about contract language, there is no "open issue" to be arbitrated under the FTA.<sup>29</sup>

UTEX's demand that the Arbitrators decide whether UTEX's customers are carriers must also be rejected because the record does not actually address that question. This case was an arbitration to determine contract terms – not an arbitration to determine what kind of customers UTEX does or does not have. UTEX's customers did not testify, and UTEX referred to them only in conclusory, general terms. The nature of UTEX's traffic was also not directly at issue. Discussion of UTEX's customers and traffic in testimony and in the hearing was anecdotal – not an attempt to "prove"

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<sup>29</sup> The "Issue Descriptions" that appear in a Decision Point List are merely the parties' attempts to express in summary form the disagreements embodied in the competing contract language. At the end of the day, the most accurate (albeit uninformative) articulation of each issue is, "Which party's proposed contract language should be included in the ICA?"

what kind of traffic UTEX was routing or what kind of customers UTEX has. Moreover, any customers or traffic UTEX may have now will not necessarily be the same customers or traffic UTEX will have later when the contract is signed.

For all of these reasons, the Arbitrators properly did not make any findings about UTEX's customers or the nature of UTEX's traffic.

**VI.**  
**RESPONSE TO UTEX'S**  
**"EXCEPTION TO RELIANCE ON DOCKET 33323" (PP. 23-24)**

UTEX's complaint that the Arbitrators improperly relied on rulings in Docket No. 33323 is meritless. UTEX erroneously asserts that Docket No. 33323 was merely an interpretation of an existing agreement and therefore could have nothing to do with an arbitration of a new contract. Docket No. 33323 applied many controlling principles of federal law that should be applied here as well.

**VII.**  
**RESPONSE TO UTEX'S "EXCEPTION TO SPECIFIC FINDINGS" (PP. 24-47)**

**A. Response to UTEX's Exception Regarding Performance Measures (pp. 24-28)**

In this exception, UTEX challenges the Arbitrators' adoption of AT&T Texas' proposed language on performance measurements. In its challenge, UTEX raises no new arguments, instead resurrecting the same failed arguments it made in testimony. The Arbitrators properly relied on AT&T Texas' testimony, finding that AT&T Texas' proposed language on performance measurements addresses the relevant activities associated with the interconnection and UNEs sought by UTEX. This includes the connection of the loop and sub-loop to the network interface device on a pole and the

small volume splicing. As Mr. Randy Dysart testified, “How or where they are connected is not material to the measurement.”<sup>30</sup>

UTEX incorrectly suggests in its exceptions that AT&T Texas “admitted” that not all of the UNEs and interconnection rights granted to UTEX are covered, “pending a BFR-like process.”<sup>31</sup> This suggestion has absolutely no merit. The statement by Mr. Dysart is taken out of context. Mr. Dysart was responding to questions by the Arbitrators regarding whether there was a performance measurement that measured the timeliness of the BFR ordering process. During the hearing, Mr. Dysart clarified that once AT&T Texas received a service order for a particular UNE such as for the loop to a pole, small-volume splice etc., then AT&T Texas’ performance in provisioning that order would be measured. As to whether there was a performance measurement for the “BFR process,” Mr. Dysart indicated that at one time there was a measurement that addressed the BFR-process, however, he was not sure whether that measure existed in the current business rules. Mr. Dysart has confirmed that AT&T Texas’ business rules contain a measure that addresses percentage of requests processed within 30 days. PM 120.

In addition, contrary to assertions made in UTEX’s Exceptions, and as Mr. Dysart testified, SS-7 interconnection is included in the interconnection trunk disaggregation of the performance measurements.<sup>32</sup> UTEX’s claim that that the business rules would not

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<sup>30</sup> Dysart Direct at 10, line 8 and Dysart Rebuttal at 3, lines 11-12.

<sup>31</sup> UTEX’s Exceptions at 26.

<sup>32</sup> Dysart Direct at 10, lines 14-15 and Dysart Rebuttal at 3, lines 18-19. Prior to the current version 4 of the performance measurements, there were separate disaggregations for interconnection trunks and SS7 links. As part of the collaborative, it was agreed by the parties to combine the disaggregations into one.



apply to “500” numbers, is equally meritless. To the extent “500” numbers are loaded in the LERG, the business rules will apply.<sup>33</sup>

Finally, UTEX’s claim that it was somehow precluded from participating in “industry wide negotiations” resulting in the performance remedy plan is simply a fairytale. There was nothing other than UTEX’s refusal to participate that would have prevented UTEX from being a party to the collaborative sessions and workshops conducted by the Commission. Mr. Dysart provides testimony on this issue identifying the over 35 CLECs that signed a stipulation letter agreeing to accept the performance measurement and remedy plans resulting from these negotiations.<sup>34</sup> Like UTEX, these CLECs were not parties to Docket No. 28821, nor did they actively participate in the negotiations but instead monitored the negotiations and/or worked with active CLEC participants. These negotiations resulted in the “stand-alone” performance measurement remedy plan which is available to UTEX through Attachment 17 of the successor T2A agreement and which AT&T Texas is sponsoring in this proceeding.<sup>35</sup> The performance measurements negotiated by the industry and contained in Attachment 17 include all UNEs required by the FTA and do not exclude any methods of interconnection. There is no need to negotiate a new performance remedy plan as UTEX suggests.

UTEX is also wrong when it argues that “the Arbitrators must adopt language in the final Award that prescribes a Performance Remedy Plan Agreement.”<sup>36</sup>

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<sup>33</sup> PM 117 percent NXX’s loaded and tested by the LERG effective date.

<sup>34</sup> Dysart Direct at 4, n. 5.

<sup>35</sup> Dysart Direct at 3-7.

<sup>36</sup> UTEX’s Exceptions at 28.

Attachment 17 sets forth the terms and conditions for reporting performance and states that enforcement measures through liquidated damages for those performance measures are agreed upon in the Performance Remedy Plan Agreement. No additional language is needed as UTEX simply needs to enter into the Performance Remedy Plan Agreement.

**B. Reference to AT&T Texas' Tariffs (pp. 28-29)**

UTEX's complaint that the Arbitrators improperly referred to AT&T Texas' tariffs that were not in the record is frivolous. There are numerous references to AT&T Texas' tariffs throughout the contract language at issue. The tariffs themselves need not be in the record in order for the Arbitrators to refer to them.

**C. "Characterization of UTEX Position" (pp. 29-30)**

On pages 207-209 of the Attachment B Matrix to their Proposal for Award, the Arbitrators address CPN and correctly adopt AT&T Texas' proposal to require "true and correct" CPN on all traffic and impose intraLATA toll charges on all traffic lacking CPN whenever UTEX passes more than 10 percent of its traffic without that CPN. UTEX complains that, in discussing CPN, the Arbitrators have mischaracterized UTEX's position. UTEX is mistaken. The Arbitrators discuss and reject UTEX's proposal for a 60/40 requirement for CPN – *i.e.*, a requirement to have CPN on only 60 percent of UTEX's traffic. UTEX claims it "no longer supports" this position and cites in footnote 37 to several pages of testimony as proof. None of the cites supports UTEX's claims, and the hearing testimony as well as UTEX's Position Statement in the Matrix refute it.<sup>37</sup>

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<sup>37</sup> Proposal for Award Matrix at 206, UTEX Position; Hearing Tr. at 364, lines 10-12 (Feldman states, "If you believe for some reason that we can't modernize our proposals to be consistent with the core mandamus, then we'll stick with the 60/40.")

**D. “Findings on § 251(b)(5)” (p. 30)**

UTEX here complains that the Arbitrators’ rulings on compensation are not “mutual and reciprocal.” UTEX’s argument makes no sense. While the Arbitrators have erred in their compensation system for “ESP Traffic,” it is clear that the terms are reciprocal. AT&T Texas does not understand UTEX’s claim that the Proposal for Award authorizes AT&T Texas to impose access charges on UTEX for calls that AT&T Texas customers originate, and UTEX points to no contract language that would do that. If UTEX requests AT&T Texas’ 500 access service, UTEX would be required to pay the federally tariffed access charges to AT&T Texas for routing to UTEX those calls originated by AT&T Texas’ customers. Those terms, however, are properly contained in AT&T Texas’ tariffs, not the ICA. In subscribing to AT&T Texas’ access service, UTEX would be functioning as an IXC and, like any other IXC that uses AT&T Texas’ access services, must pay for them.

UTEX’s blanket statement that AT&T Texas cannot impose access charges for any traffic that AT&T Texas originates on its network is false. UTEX cites FCC rules that pertain only to reciprocal compensation, which is assessed on local, § 251(b)(5) traffic. The rules for reciprocal compensation do not apply to access traffic, which is governed by § 251(g) and carriers’ federal- and state-approved access tariffs.

**E. UTEX’s CPN Arguments (pp. 31-33, 33-38)**

UTEX’s criticism of the Arbitrators’ decision to make CPN requirements applicable to VoIP traffic is meritless. UTEX argues that the Commission is wrong in concluding “it is necessary for the VOIP end user to be assigned a telephone number that has CPN in order for the VOIP end user to receive calls from AT&T Texas’

customers.”<sup>38</sup> The Arbitrators correctly concluded that, to receive calls from the PSTN, a VoIP end user must have CPN.

UTEX’s argument to the contrary only confirms that UTEX is wrong. UTEX points out that parties can call an 8YY number even though 8YY is not proper CPN. UTEX also observes that parties can call a 500 number as well, even though that is not valid CPN either. UTEX’s discussion ignores important facts and inadvertently concedes a significant issue in this proceeding -- *i.e.*, that, in routing 500 numbers, AT&T Texas would be providing an access service in the same way it provides access service in routing 8YY calls placed by its end users.

The service AT&T Texas performs when it originates or terminates 8YY numbers is access service.<sup>39</sup> 8YY numbers are not the real numbers being called; they are pseudo numbers used to reach the actual called numbers, which do have valid, geographic CPN. Thus, when parties dial an 8YY number that routes through the PSTN, they are actually calling a real number – with valid CPN – behind the 8YY number being dialed. The 8YY call reaches the number with valid CPN because the owner of that number has paid for the 8YY access service that enables the 8YY number to route.

8YY service is a service offered by IXCs to end users, which are usually businesses that want customers to call them on a toll-free line from many different local calling areas. The LEC’s role in 8YY service is in either launching the call for the IXC –

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<sup>38</sup> UTEX’s Exceptions at 37, quoting the Proposal for Award at 59.

<sup>39</sup> The owners of 8YY numbers should not use those numbers to make outgoing calls, but many do. In so doing, they are manipulating their true CPN. UTEX delivered millions of 8YY calls to AT&T Texas, which were many of the calls at issue in Docket No. 33323, and the Commission properly held that those calls did not contain valid CPN, and once UTEX exceeded the 90/10 threshold, UTEX owed access charges on that traffic.

to whom it would bill access charges – or terminating a call to the end user customer that is buying the 8YY service – in which case the LEC would charge the IXC access charges for terminating the call to the 8YY customer.<sup>40</sup> Both of those services are subject to charges contained in a federal tariff. It is important to distinguish between the charge the IXC imposes on its 8YY business customer for the 8YY service and the “toll-free” call the business customer’s callers get from the LEC’s end users who dial the 8YY numbers. In routing those “toll free” calls from their end users, LECs provide 8YY access service to the IXC that is providing the 8YY service, and those IXCs owe originating access charges to the LEC for routing those calls.

UTEX properly analogizes its 500 numbers to 8YY numbers because the services operate in much the same manner. Both 500 and 8YY numbers can be routed through the PSTN only by virtue of acquisition of an access service, and both require geographic numbers behind them with valid CPN. If UTEX requests AT&T Texas to route calls from AT&T Texas to UTEX’s customers via a 500 number, UTEX is requesting access service in the same way any other IXC would be requesting access service in conjunction with providing its 8YY service.

Newton’s Telecom Dictionary supports both UTEX’s analogy and the necessary conclusion that both 500 service and 800 service are access services.<sup>41</sup> Newton’s recognizes that 500 and 800 numbers are not the real numbers for any call that enters the PSTN. For example, Newton’s describes 500 service as providing a “follow me”

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<sup>40</sup> In Docket No. 33323, the Commission authorized AT&T Texas to charge UTEX for terminating these calls because UTEX delivered them to AT&T Texas without CPN and provided no means to identify an underlying IXC. Thus, UTEX functioned as an IXC in delivering these calls to AT&T Texas.

<sup>41</sup> Newton’s Telecom Dictionary at 65 (discussing 500 service) and 66-67 (discussing 800 service) (24<sup>th</sup> ed. 2008).

service that “might begin at your business phone, progressing to your cellular/PCS phone, then to your home phone, etc.”<sup>42</sup> In other words, the 500 number “follows” the real phone number with valid CPN. Newton’s also describes 500 service as having “[f]urther options [that] might include billing, such as *caller pays any long distance charges . . .*”, thereby recognizing the service as an access service.<sup>43</sup>

Similarly, Newton’s describes 800 service as the routing of a call by the LEC to “the proper IXC,” who then “processes the 800 number, perhaps translating it into a ‘real’ telephone number in order to route it correctly.”<sup>44</sup> In other words, the IXC identifies the real CPN and routes the call to the LEC in the local calling area where its customer’s telephone number (often at a Call Center) is located. Newton’s observes that sometimes the IXC will “translate the 800 number into an internal, nonstandard 10-digit number for further routing to the terminating Central Office (“CO”) and trunk or trunk group.”<sup>45</sup> When the latter occurs, the call is being delivered directly to a PBX rather than being terminated on the PSTN. These discussions in Newton’s confirm that neither 500 numbers nor 800 numbers are “real” numbers and that the routing of them by LECs that originate or terminate calls to or from such pseudo-numbers is access service.

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<sup>42</sup> Newton’s at 65.

<sup>43</sup> *Id.* (emphasis added).

<sup>44</sup> *Id.* at 66.

<sup>45</sup> *Id.*

UTEX's argument that the Arbitrators erred in concluding that 500 numbers must be counted in the 90/10 ratio is wrong.<sup>46</sup> As the Arbitrators state, 500 numbers are – just like 8YY numbers -- non-geographic in nature and therefore cannot constitute valid CPN.<sup>47</sup>

**F. “Inclusion of Optional EAS in ‘Local’” (p. 33)**

UTEX's complaint about the special rates for Optional EAS traffic ignores the fact that these extended calling areas involve a cost that the Commission has long recognized.<sup>48</sup> UTEX argues these rates are not “reciprocal” because UTEX will not be able to collect them. If UTEX were providing Optional EAS service, it would be entitled to charge for EAS traffic. Section 8.1 of Attachment 6 to NIM states: “CLEC is not precluded from establishing its own local calling areas or prices for purposes of retail telephone service offerings.” If only AT&T Texas receives this compensation, that is because only AT&T Texas provides this service.

**G. UTEX as IXC (pp. 38-41, 43-45)**

The Arbitrators should also reject UTEX's protests regarding the Arbitrators' conclusions that UTEX acts as an IXC when it routes long distance traffic to AT&T Texas. UTEX's main support for its position here is that *UTEX* does not impose toll charges on its customers.<sup>49</sup> The arrangements UTEX has with its customers cannot convert long-distance traffic into local traffic. Were that true, any IXC could simply avoid access charges by proclaiming it did not impose toll charges on its customers and,

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<sup>46</sup> UTEX's Exceptions at 38.

<sup>47</sup> Proposal for Award at 59.

<sup>48</sup> AT&T Texas agrees that the Arbitrators should not label this traffic as “Local”.

<sup>49</sup> UTEX's Exceptions at 39-40.

therefore, did not have to pay access charges to the ILECs that originate and terminate the IXC's long-distance traffic. UTEX's argument that its "IGI-POP is an origination and termination service that qualifies as an exchange service" is just a rehash of its "meet me in the LATA" argument that breaks a call into two parts and ignores where the call originated. The Commission rejected that argument in Docket No. 33323, and the Arbitrators should do so here as well.

UTEX's argument that, when UTEX delivers long-distance traffic to AT&T Texas, it is *AT&T Texas* that is functioning as the IXC is fanciful, to say the least.<sup>50</sup> AT&T Texas delivers traffic it receives from UTEX to AT&T Texas end users in the local calling area where AT&T Texas takes over the call. If the call originates outside that local calling area, AT&T Texas is providing exchange access – *i.e.*, access to the local exchange – not long distance.

The Arbitrators properly hold UTEX liable for long-distance calls when UTEX delivers them without a CIC or ACTL. In those instances, UTEX is functioning as an IXC and bears the responsibility for the terminating access charges. In so holding, the Arbitrators are fully consistent with the FCC's access charge rules. Neither FCC Rule 69.5(b) nor AT&T Texas' switched access tariffs turn upon the particular format in which an interexchange call is carried. To the contrary, they apply whenever an "interexchange carrier" uses AT&T Texas' local exchange facilities in the provision of interstate telecommunications services (or, in the case of AT&T Texas' state switched access tariff, in the provision of intrastate interexchange service). The Arbitrators are correct in holding that, to the extent UTEX acts as an IXC, providing interexchange

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<sup>50</sup> *Id.* at 40.



telecommunications service (such as the transport of VoIP traffic between local exchanges), it is subject to access charges under the FCC's current rules.

**H. “Finding that FCC Rate Does Not Apply to All § 251(b)(5) Traffic” (pp. 41-43)**

UTEX's argument that the Commission cannot have different rates for Optional EAS and FX traffic is meritless. Special rates for these forms of traffic are well established. And, since FX traffic is bill and keep, UTEX has no basis to complain.<sup>51</sup> UTEX's reliance on the FCC's order prohibiting different rates for ISP-bound traffic from the reciprocal compensation rates imposed on local traffic does not address either FX or Optional EAS traffic, both of which are entitled to different rate treatment. In citing paragraph 89 of the 2001 ISP Remand Order, UTEX overlooks footnote 177 to that paragraph, which makes clear the FCC's ruling did not extend to Optional EAS or FX traffic.<sup>52</sup> This Commission has similarly found that the reciprocal compensation rules do not apply to Optional EAS traffic, which is intrastate access traffic that receives a special rate in lieu of access charges.<sup>53</sup>

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<sup>51</sup> Proposal for Award, Attachment B at 197, AT&T NIM 6-3.

<sup>52</sup> *In The Matter Of Implementation Of The Local Competition Provisions In The Telecommunications Act Of 1996*, Intercarrier Compensation for ISP-Bound Traffic, 16 FCC Rcd. 9151, 2001 WL 455869, Order on Remand and Report and Order, at n. 177 (Rel. Apr. 27, 2001) (“Pursuant to the analysis we adopt above, section 251(b)(5) applies to telecommunications traffic between a LEC and a telecommunications carrier other than a CMRS provider that is not interstate or intrastate access traffic delivered to an IXC or an information service provider, and to telecommunications traffic between a LEC and a CMRS provider that originates and terminates within the same MTA.”). Optional EAS is intrastate access traffic. Therefore, the FCC was *not* referring to Optional EAS when it required the reciprocal compensation rate for ISP-traffic and local traffic to be the same.

<sup>53</sup> Docket No. 21982, *Proceeding To Examine Reciprocal Compensation Pursuant To Section 252 Of The Federal Telecommunications Act Of 1996*, Revised Arbitration Award, at 17-18 (“[O]ptional EAS traffic is not subject to reciprocal compensation.”) (Aug. 31, 2000); Docket No. 28821, Arbitration Award, Intercarrier Compensation – JT DPL Final at 29 of 84 (Feb. 23, 2005) (Item 520) (same holding).

## **I. Ruling on UNE Loops to UTEX's customers (pp. 45-47)**

The Arbitrators correctly found that UTEX would generally not be able to buy UNE loops for its “ESP” customers because, as UTEX itself described them, those “ESP” customers would not be actual consumers of the lines but would, instead, use those lines to route traffic. As the Arbitrators observed, FCC Rule 51.319(a) defines a UNE loop as a line that “runs between an ILEC central office and ‘an end-user customer premises’” and only UNE loops are available at TELRIC pricing.<sup>54</sup> Therefore, UTEX may not purchase at TELRIC pricing any network elements that are not being provided to an end-user customer premises.

UTEX's effort to try to fit its round-peg customers into the square hole of the ESP exemption only confirms that the Arbitrators correctly resolved this issue. (The Arbitrators should apply similar reasoning to reverse their misconceived application of the ESP exemption in creating their ESP/POP test.) In its 1989 NPRM on Amendments to Part 69 – its access charge rules – the FCC recognized that its treatment of ESPs as end users was a fiction used to allow them to purchase business lines – for their own consumption – rather than pay access charges.<sup>55</sup> The FCC has recognized that ESPs are not end users in other capacities.<sup>56</sup> UTEX's ESP customers are not consuming UNE loops as “end users” – they are routing traffic originated by others – and cannot provide a legal basis for UTEX to purchase UNE loops for them. Nor can these ESPs

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<sup>54</sup> Proposal for Award at 77.

<sup>55</sup> *In the Matter of Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture*, Notice of Public Rulemaking, 4 FCC Rcd. 3983, 1989 WL 512039 at ¶ 39 (May 9, 1989).

<sup>56</sup> *Id.* at ¶¶ 41-42.

give UTEX a right to avoid access charges when UTEX takes long distance traffic from them.

## **VIII. UTEX ATTACHMENT D**

UTEX includes in Attachment D to its Exceptions what UTEX describes as “UTEX’s initial attempt to construct parts of a conforming contract.”<sup>57</sup> Preparation of a conforming contract is premature at this stage, when the Arbitrators have not even ruled on the parties’ respective exceptions to their Proposal for Award. AT&T Texas requests that the Arbitrators disregard Attachment D. The time to prepare a conforming contract will be after the Arbitrators issue their Award and the Commissioners have reviewed it and determined whether to approve or modify it. Moreover, UTEX’s insertion of rulings from the Proposal for Award into the contract itself is confusing and improper.<sup>58</sup> Finally, UTEX’s submission goes beyond an effort at “conforming” contract language. For example, UTEX improperly inserts its “trump” language that makes UTEX’s Attachment A Rider superior to any other provision in the agreement. The Arbitrators should reject this additional language and should defer a review of conforming contract language until the terms of the contract are finally determined by the Commission.

## **IX. CONCLUSION**

For the reasons stated, the Arbitrators should reject UTEX’s exceptions and proposed new contract language and should sustain AT&T Texas’ exceptions submitted in its October 7<sup>th</sup> filing and grant AT&T Texas such other and further relief to which it is entitled.

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<sup>57</sup> UTEX’s Exceptions at 11.

<sup>58</sup> For example, on page 1 of the Attachment NIM, UTEX references the Arbitrators’ ruling on page 159 of the Arbitrators’ Attachment B Matrix.

Respectfully submitted,

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BELL TELEPHONE COMPANY D/B/A  
AT&T TEXAS**

**CERTIFICATE OF SERVICE**

I, Thomas J. Horn, General Attorney for AT&T Texas, certify that a true and correct copy of this document was served to all parties hereto on October 19, 2010, in the following manner, via: U.S. Mail, electronic mail, facsimile, or overnight delivery.

Issue #	Issue Statement	Attachment & Sections	Arbitrators’ Decision	UTEX’ EXCEPTION	AT&T TEXAS’ RESPONSE TO UTEX’S EXCEPTION
UTEX 2	Are UTEX’s services to Wholesale Customers that provide or support New Technology based services and applications either “Telephone Exchange Service” or “Exchange Access Service?”	See contract references for Issue 1	<i>The Arbitrators conclude that UTEX may obtain an ICA allowing it to interconnect with AT&amp;T Texas for the transmission and routing of telephone exchange service and exchange access consistent with the FTA. AT&amp;T Texas does not dispute this conclusion. LECs may also serve as interexchange carriers and exchange interexchange toll traffic with other LECs. Furthermore, the issue of whether service provided by UTEX to its Enhanced Service Provider (ESP) customers is telephone exchange service or exchange access service is addressed in the text of the Award in the section titled “Intercarrier Compensation for Traffic Involving UTEX’s ESP Customers.” The Arbitrators address the specific terms of the ICA in connection with other DPL issues.</i>	<p><i>UTEX excepts to Issue UTEX 2 in that the TPUC did not fully answer the open issue posed by the question.</i></p> <p><i>In particular the TPUC did not resolve when Exchange Access or Telephone Exchange Service is being provided by UTEX when UTEX supports customers such as SKYPE and Google and other applications that launch voice communications that are “not PSTN” originated. Instead the TPUC created a structure that allows for the parties to create future disputes based on various facts and circumstances and further shifted the burden of proof nto UTEX in various circumstances and also created a scheme to not fully allow the ESP Exemption to be used by Information Service Providers.</i></p> <p><i>To resolve the open issue, the TPUC must rule that all IGI-POP customers are ESPs entitled to the ESP Exemption with no restrictions or the TPUC must clearly specify WHY particular customers do not qualify, not just “how” to implement a result desired by the TPUC.</i></p>	<p>See AT&amp;T Texas’ Exception Brief pp. 7-23.</p> <p>See AT&amp;T Texas’ Response Brief pp. 11-17 and 31-32.</p>
UTEX 3	Are UTEX’s services to Wholesale Customers that provide or support New Technology based services and applications “Telephone Exchange Service” under § 153(47)(A) because they are a	See contract references for Issue 1	<i>The issue of whether service provided by UTEX to its ESP customers is telephone exchange service or exchange access service is addressed in the text of the Award in the section titled “Intercarrier Compensation for Traffic Involving UTEX’s ESP Customers.” The Arbitrators address the specific terms of the ICA in connection with other DPL issues.</i>	<p><i>UTEX excepts to Issue UTEX 3 in that the TPUC did not fully answer the open issue posed by the question.</i></p> <p><i>The legal classification issue presented by UTEX was not answered in the text of the PFA. In particular there is no explanation as to why a call launched from the Internet, and not an “exchange” is treated as if it were launched from an “exchange” foreign from the 1st telephone exchange it touches via a connection to UTEX.</i></p>	<p>See AT&amp;T Texas’ Exception Brief pp. 7-23.</p> <p>See AT&amp;T Texas’ Response Brief pp. 11-17 and 31-32.</p>

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	“service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge?”			<i>To resolve the open issue, the TPUC must rule that all IGI-POP customers are ESPs entitled to the ESP Exemption with no restrictions or the TPUC must clearly specify WHY particular customers do not qualify, not just “how” to implement a result desired by the TPUC</i>	
UTEX 4	Are UTEX’s services to Wholesale Customers that provide or support New Technology based services and applications “Telephone Exchange Service” under § 153(47)(B) because they are a “comparable service provided through a system of switches, transmission equipment, or other	See contract references for Issue 1	<i>The issue of whether service provided by UTEX to its ESP customers is telephone exchange service or exchange access service is addressed in the text of the Award in the section titled “Intercarrier Compensation for Traffic Involving UTEX’s ESP Customers.” The Arbitrators address the specific terms of the ICA in connection with other DPL issues.</i>	<i>UTEX excepts to Issue UTEX 4 in that the TPUC did not fully answer the open issue posed by the question.</i>  <i>Instead of resolving the open issue, the TPUC created a structure that allows for the parties to create future disputes based upon various facts and circumstances and further shifted the burden of proof to UTEX in various circumstances and also created a scheme to not fully allow the ESP Exemption to be used by Information Service Providers.</i>  <i>To resolve the open issue, the TPUC must rule that all IGI-POP customers are ESPs entitled to the ESP Exemption with no restrictions or the TPUC must clearly specify WHY particular</i>	See AT&T Texas’ Exception Brief pp. 7-23.  See AT&T Texas’ Response Brief pp. 11-17 and 31-32.

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	facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service?”			<i>customers do not qualify, not just “how” to implement a result desired by the TPUC.</i>	
UTEX 5	Are UTEX’s services to Wholesale Customers that provide or support New Technology based services and applications “Exchange Access Service under § 153(16) because they constitute “the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services?”	See contract references for Issue 1	<i>The issue of whether service provided by UTEX to its ESP customers is telephone exchange service or exchange access service is addressed in the text of the Award in the section titled “Intercarrier Compensation for Traffic Involving UTEX’s ESP Customers.” The Arbitrators address the specific terms of the ICA in connection with other DPL issues.</i>	<i>UTEX excepts to Issue UTEX 5 in that the TPUC did not attempt to answer the open issue posed by the question.</i>  <i>This is an important issue for UTEX, as if some or any of UTEX’s customers are in fact IXC’s (e.g., providers of Telephone Toll Service based on the application of Federal Law, UTEX is entitled to know how to apply the law to prevent such customers from misrouting traffic.</i>  <i>To resolve the open issue, the TPUC must rule that all IGI-POP customers are ESPs entitled to the ESP Exemption with no restrictions or the TPUC must clearly specify WHY particular customers do not qualify, not just “how” to implement a result desired by the TPUC.</i>	See AT&T Texas’ Exception Brief pp. 7-23.  See AT&T Texas’ Response Brief pp. 11-17 and 31-32.
UTEX 6	Are there any restrictions on the kind of service UTEX can provide to Wholesale Customers that provide or support	See contract references for Issue 1	<i>The issue of whether service provided by UTEX to its ESP customers is telephone exchange service or exchange access service is addressed in the text of the Award in the section titled “Intercarrier Compensation for Traffic Involving UTEX’s ESP Customers.” The Arbitrators address the specific terms of the ICA in connection with other DPL issues.</i>	<i>The Arbitrator’s decision on its face does not answer the question. UTEX Excepts to Issue 6 as unanswered.</i>  <i>UTEX wishes to have clarification that there are no restrictions on the kinds of service we can provide as an LEC for so long as it is Telephone Exchange</i>	See AT&T Texas’ Exception Brief pp. 7-23.  See AT&T Texas’ Response Brief pp. 11-17 and 31-32.

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	New Technology based services and applications or the means by which UTEX provides these services?			<p><i>Service or Exchange Access Service. UTEX notes that if all of UTEX’s Customers are not deemed Carriers UTEX’s understanding of Federal Law is that no limitations or restrictions apply.</i></p> <p><i>UTEX proposes the following language be included in all relevant sections including UNE and NIM and ITR sections:</i></p> <p><i>“Unless any of UTEX’s customers are deemed carriers under federal law, no restrictions apply to UTEX’s ability to use UNEs, Resale, or Interconnection to provide its customer service To provide a telecommunications service”</i></p>	
UTEX 7	Under the Act and current FCC rules are any of UTEX’s current or potential Wholesale Customers that provide or support New Technology based services Telecommunication s Carriers who provide Telecommunication s Services generally and Telephone Toll service specifically?	See contract references for Issue 1	<p><i>The issue of whether UTEX’s ESP customers are telecommunications carriers is addressed in the text of the Award in the section titled “Intercarrier Compensation for Traffic Involving UTEX’s ESP Customers.” The Arbitrators address the specific terms of the ICA in connection with other DPL issues.</i></p> <p><i>To the extent that this issue is not addressed in those sections of the Award, the Arbitrators have concluded that resolution of the issue is not necessary to determine the appropriate ICA language for intercarrier compensation.</i></p>	<p><i>UTEX excepts to UTEX Issue 7. The does not address in the text of the award whether and when ESP customers are telecommunications carriers.</i></p> <p><i>This is an open issue that must be resolved. UTEX acknowledges that the Arbitrators created a structure in the PFA that pushes off for to a potential future dispute whether and why certain UTEX customers may or may not be an ESP and therefore entitled to the ESP Exemption. This type of ruling simply is not allowed. UTEX is entitled to receive an arbitrated result that is consistent with federal law to this issue now. UTEX should not be subject to a future dispute on this “Classification of Customer” issue.</i></p> <p><i>Further, this issue is not only for intercarrier compensation. If a customer is not a carrier, then under Federal Law UTEX may use UNEs to provide services to the customer using UNEs, Resale or Interconnection. If any customer is a carrier then UTEX can still provide service</i></p>	<p>See AT&amp;T Texas’ Exception Brief pp. 7-23.</p> <p>See AT&amp;T Texas’ Response Brief pp. 21-23; also 11-17 and 31-32.</p>



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				<p><i>although the rules are admittedly different with regard to Resale and UNE loops and the routing may vary as well.</i></p> <p><i>UTEX proposes the following language “Unless any of UTEX’s customers are deemed carriers under federal law, no restrictions apply to UTEX’s ability to use UNEs, Resale, or Interconnection to provide a telecommunications service. Further if such non-carrier customers claim to be ESPs they are entitled to the ESP Exemption.”</i></p>	
UTEX 8	Under the Act and current FCC rules if a UTEX current or potential Wholesale Customer that provides or supports New Technology based services is not a Telecommunication s Carrier that provides Telecommunication s Services generally and Telephone Toll service specifically, and if the Wholesale Customer asserts its right to the “ESP Exemption” can its traffic nonetheless be subjected to Exchange Access	See contract references for Issue 1	<p><i>The issue of applicability of the ESP exemption to UTEX’s ESP customers is addressed in the text of the Award in the section titled “Intercarrier Compensation for Traffic Involving UTEX’s ESP Customers.” The Arbitrators address the specific terms of the ICA in connection with other DPL issues.</i></p>	<p><i>UTEX excepts to UTEX Issue 8. The PFA does not answer the question.</i></p> <p><i>This is an open issue that must be resolved.</i></p> <p><i>UTEX acknowledges that the Arbitrators created a structure in the PFA that can produce a result, but nonetheless did not answer this question.</i></p> <p><i>In particular the TPUC did not resolve that if Exchange Access or Telephone Exchange Service is NOT being provided by a UTEX Customer who is not a Carrier, and that customer both launches voice communications that are “not PSTN” originated and are claimed to be exempt by the ESP exemption, and the first “Exchange” reached is a UTEX Exchange within a local calling area that there is any legal reason the ESP exemption could be “Voided” as a matter of law when the communication next goes from UTEX to AT&amp;T as part of this ICA.</i></p> <p><i>Remember that UTEX refuses to make any voluntary payment; thus the involuntary obligation</i></p>	<p>See AT&amp;T Texas’ Exception Brief pp. 7-23.</p> <p>See AT&amp;T Texas’ Response Brief pp. 11-17 and 31-32.</p>

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	charges on a mandatory basis?			<p><i>must be consistent with the Act or FCC rules. UTEX challenges any mandatory payment other than reciprocal compensation under § 251(b)(5).</i></p> <p><i>To resolve the open issue, the TPUC must rule that all IGI-POP customers are ESPs entitled to the ESP Exemption with no restrictions or the TPUC must clearly specify WHY particular customers do not qualify, not just “how” to implement a result desired by the TPUC.</i></p> <p><i>UTEX Proposes the following language “Unless any of UTEX’s customers are deemed carriers under federal law, no restrictions apply to UTEX’s ability to use UNEs, Resale, or Interconnection to provide a telecommunications service. Further if such non-carrier customers claim to be ESPs they are entitled to the ESP Exemption which then makes the telecommunications between UTEX and AT&amp;T § 251(b)(5) traffic which must be treated as such, consistent with the Act and FCC rules.”</i></p>	
UTEX 9	If, under the Act and current FCC rules a UTEX current or potential Wholesale Customer that provides or supports New Technology based services is not a Telecommunication s Carrier that provides Telecommunication s Services generally	See contract references for Issue 1	<p><i>This issue is addressed in the text of the Award in the section titled “Intercarrier Compensation for Traffic Involving UTEX’s ESP Customers.” The Arbitrators address the specific terms of the ICA in connection with other DPL issues.</i></p>	<p><i>UTEX has excepted to some rulings in the section titled “Intercarrier Compensation for Traffic Involving UTEX’s ESP Customers.” UTEX has also excepted to some of the rulings on the “other DPL issues.”</i></p> <p><i>In particular, the Arbitrators did not explain “WHY” under federal law an ESP Exemption is lost by the customer when it connects to UTEX via the public Internet when UTEX is the first carrier involved on the call and all of UTEX’s facilities are within the LCA.</i></p> <p><i>UTEX Proposes the following language “Unless</i></p>	<p>See AT&amp;T Texas’ Exception Brief pp. 7-23.</p> <p>See AT&amp;T Texas’ Response Brief pp. 11-17 and 31-32.</p>

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	and Telephone Toll service specifically, and if a Wholesale Customer’s traffic can be subjected to Exchange Access charges on a mandatory basis even if the Wholesale Customer has invoked the “ESP Exemption” is UTEX or the Wholesale Customer the party that is responsible for any AT&T access entitlement?			<i>any of UTEX’s customers are deemed carriers under federal law, no restrictions apply to UTEX’s ability to use UNEs, Resale, or Interconnection to provide a telecommunications service. Further if such non-carrier customers claim to be ESPs they are entitled to the ESP Exemption which then makes the telecommunications between UTEX and AT&amp;T § 251(b)(5) traffic which must be treated as such, consistent with the Act and FCC rules</i>	
UTEX 10	If, under the Act and current FCC rules a UTEX current or potential Wholesale Customer that provides or supports New Technology based services is not a Telecommunication s Carrier that provides Telecommunication s Services generally and Telephone Toll service specifically, and if a Wholesale	See contract references for Issue 1	<i>This issue is addressed in the text of the Award in the section titled “Intercarrier Compensation for Traffic Involving UTEX’s ESP Customers.” The Arbitrators address the specific terms of the ICA in connection with other DPL issues.</i>	<i>UTEX has excepted to some rulings in the section titled “Intercarrier Compensation for Traffic Involving UTEX’s ESP Customers.” UTEX has also excepted to some of the rulings on the “other DPL issues.”</i>	See AT&T Texas’ Exception Brief pp. 7-23.  See AT&T Texas’ Response Brief pp. 11-17 and 31-32.

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	Customer’s traffic can be subjected to Exchange Access charges on a mandatory basis even if the Wholesale Customer has invoked the “ESP Exemption” does that mean that UTEX is a joint access provider with AT&T and traditional MECAB processes and rules apply with the result that UTEX and AT&T each separately bill the Wholesale Customer for each LEC’s share of the access service they provide?				
UTEX 11	If, under the Act and current FCC rules a UTEX current or potential Wholesale Customer that provides or supports New Technology based services is not a Telecommunication s Carrier that	See contract references for Issue 1	<i>This issue is addressed in the text of the Award in the section titled “Intercarrier Compensation for Traffic Involving UTEX’s ESP Customers.” The Arbitrators address the specific terms of the ICA in connection with other DPL issues.</i>	<i>UTEX has excepted to some rulings in the section titled “Intercarrier Compensation for Traffic Involving UTEX’s ESP Customers.” UTEX has also excepted to some of the rulings on the “other DPL issues.”</i>  <i>In particular, the Arbitrators did not explain “WHY” under federal law if 251(g) applies on a call and UTEX is the first carrier involved in the termination of call to the terminating LCA UTEX is not entitled to be a Joint Access Provider regardless of the</i>	See AT&T Texas’ Exception Brief pp. 7-23.  See AT&T Texas’ Response Brief pp. 11-17 and 31-32.

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	provides Telecommunication s Services generally and Telephone Toll service specifically, and if a Wholesale Customer’s traffic can be subjected to Exchange Access charges on a mandatory basis even if the Wholesale Customer has invoked the “ESP Exemption” and if UTEX is not a joint access provider with AT&T can AT&T lawfully recover its access entitlement from UTEX even though UTEX is acting solely as an LEC?			<i>information elements contained within the call.</i>	
UTEX 12	Are there any restrictions on the kinds of service UTEX’s Wholesale Customers that provide or support New Technology based services and applications can provide to their customers insofar	Entire AT&T Agreement, and see also contract references for Issue 1	<i>This issue is addressed in the text of the Award in the section titled “Intercarrier Compensation for Traffic Involving UTEX’s ESP Customers” and the section titled “End User Definition.” The Arbitrators address the specific terms of the ICA in connection with other DPL issues.</i>  <i>To the extent that this issue is not addressed in those sections of the Award, the Arbitrators have concluded that resolution of the issue is not necessary to determine the appropriate ICA language for</i>	<i>UTEX has excepted to some rulings in the section titled “Intercarrier Compensation for Traffic Involving UTEX’s ESP Customers.” UTEX has also excepted to some of the rulings on the “other DPL issues.” UTEX has also excepted to the practice of not resolving an issue based on the notion “is not necessary to determine the appropriate ICA language” relating to a topic. Such restrictions include a requirement to create separate POPs in each LCA, requirements to use AT&amp;T’s LCAs as described in AT&amp;T Tariffs,</i>	See AT&T Texas’ Exception Brief pp. 7-23.  See AT&T Texas’ Response Brief pp. 21-23; also 11-17 and 31-32.

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	as they use UTEX’s services as an input to their service output?		<i>intercarrier compensation.</i>	<p><i>requirements related to CPN such as the negative effect applied when using a non-geographic number or the negative effect of not using any number and the discriminatory treatment of ESPs who are not carriers with respect to UNEs.</i></p> <p><i>Such restriction onto ESPs which are enforced through mandatory terms of the UTEX ICA with AT&amp;T are illegal regulations of ESPs by the PUC when the ESP is an Information Service Provider.</i></p> <p><i>UTEX proposes eliminating all such restrictions in the ICA conforming language.</i></p>	
UTEX 13	Is the proper analysis of the regulatory classification relating to Wholesale Customers’ New Technology based services and applications based on a review of their services in general or is the focus of their traffic on a call by call basis??	See contract references for Issue 1	<i>This issue is addressed in the text of the Award in the section titled “Intercarrier Compensation for Traffic Involving UTEX’s ESP Customers.” The Arbitrators address the specific terms of the ICA in connection with other DPL issues.</i>	<p><i>UTEX has excepted to some rulings in the section titled “Intercarrier Compensation for Traffic Involving UTEX’s ESP Customers.” UTEX has also excepted to some of the rulings on the “other DPL issues.”</i></p> <p><i>Specifically, UTEX objects to the Call by Call regulation of Information Services based upon the use or non-use of CPN by Information Service Providers. The issue should simply be was the ESP Exception properly used.</i></p> <p><i>UTEX proposes the re-inclusion of its ESP Exemption definition to the contract and a plane statement that if the ESP Exemption is claimed by a UTEX Customer that the traffic shall be 251(b)(5).</i></p>	<p>See AT&amp;T Texas’ Exception Brief pp. 7-23.</p> <p>See AT&amp;T Texas’ Response Brief pp. 11-17 and 31-32.</p>
UTEX 14	If the proper analysis of the regulatory classification relating to Wholesale	See contract references for Issue 1	<i>This issue is addressed in the text of the Award in the section titled “Intercarrier Compensation for Traffic Involving UTEX’s ESP Customers.” The Arbitrators address the specific terms of the ICA in connection with other DPL issues.</i>	<i>UTEX has excepted to some rulings in the section titled “Intercarrier Compensation for Traffic Involving UTEX’s ESP Customers.” UTEX has also excepted to some of the rulings on the “other DPL issues.”</i>	<p>See AT&amp;T Texas’ Exception Brief pp. 7-23.</p> <p>See AT&amp;T Texas’ Response Brief pp. 11-17 and 31-32.</p>

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	Customers’ New Technology based services and applications is based on a review of their services in general how is this review to be conducted, what information is used, are the Wholesale Customers necessary parties to any individual determination, can UTEX rely on Wholesale Customer representations or must UTEX individually and personally investigate potential Wholesale Customers? Is UTEX under any specific obligation to continually and personally monitor and police the activities and services of its Wholesale Customers?			<p><i>This is an open issue that must be resolved. UTEX acknowledges that the Arbitrators created a structure in the PFA that pushes off for to a potential future dispute whether and why certain UTEX customers may or may not be an ESP and therefore entitled to the ESP Exemption. This type of ruling simply is not allowed. UTEX is entitled to receive an arbitrated result that is consistent with federal law to this issue now. UTEX should not be subject to a future dispute on this “Classification of Customer” issue.</i></p> <p><i>Further, this issue is not only for intercarrier compensation. If a customer is not a carrier, then under Federal Law UTEX may use UNEs to provide services to the customer using UNEs, Resale or Interconnection. If any customer is a carrier then UTEX can still provide service although the rules are admittedly different with regard to Resale and UNE loops and the routing may vary as well.</i></p> <p><i>UTEX proposes the following language “Unless any of UTEX’s customers are deemed carriers under federal law, no restrictions apply to UTEX’s ability to use UNEs, Resale, or Interconnection to provide a telecommunications service. Further if such non-carrier customers claim to be ESPs they are entitled to the ESP Exemption. For such UTEX customers that are Carriers and otherwise claim an ESP Exemption, the parties shall develop joint audit methods to ensure that the ESP Exemption is properly applied consistent with the “AT&amp;T IP In the Middle” order.”</i></p>	

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UTEX 15	If the review is based on call-by-call analysis, is this review conducted using call signaling information, call bearer information (content) or information from other sources?	See contract references for Issue 1	<i>This issue is addressed in the text of the Award in the section titled “Intercarrier Compensation for Traffic Involving UTEX’s ESP Customers.” The Arbitrators address the specific terms of the ICA in connection with other DPL issues. The exchange of Calling Party Number (CPN) information is addressed under DPL Issue AT&amp;T NIM 6-5.</i>	<i>UTEX has excepted to some rulings in the section titled “Intercarrier Compensation for Traffic Involving UTEX’s ESP Customers.” UTEX has also excepted to some of the rulings on the “other DPL issues” such as UTEX Issue 13 above and to the CPN rulings in DPL Issue AT&amp;T NIM 6-5. UTEX adopts those exceptions for this issue as well.</i>	See AT&T Texas’ Exception Brief pp. 7-23 for discussion on Intercarrier Compensation.  See AT&T Texas’ Response Brief pp. 21-23 for discussion of why the Arbitrators need not address this issue.
UTEX 16	If the review is based on call-by-call analysis using call signaling information, what signaling information is to be used and how is it to be generated, exchanged and observed?	See contract references for Issue 1	<i>This issue is addressed in the text of the Award in the section titled “Intercarrier Compensation for Traffic Involving UTEX’s ESP Customers.” The Arbitrators address the specific terms of the ICA in connection with other DPL issues. The exchange of Calling Party Number (CPN) information is addressed under DPL Issue AT&amp;T NIM 6-5.</i>	<i>UTEX has excepted to some rulings in the section titled “Intercarrier Compensation for Traffic Involving UTEX’s ESP Customers.” UTEX has also excepted to some of the rulings on the “other DPL issues” such as UTEX Issue 13 above and to the CPN rulings in DPL Issue AT&amp;T NIM 6-5. UTEX adopts those exceptions for this issue as well.</i>	See AT&T Texas’ Response to UTEX’s Exception in UTEX 15.
UTEX 17	If the review is based on call-by-call analysis using call bearer information what “content” must be captured, and how is it to be stored, exchanged and observed without violating the concept of common carriage and statutory and common-law user	See contract references for Issue 1	<i>This issue is addressed in the text of the Award in the section titled “Intercarrier Compensation for Traffic Involving UTEX’s ESP Customers.” The Arbitrators address the specific terms of the ICA in connection with other DPL issues. The exchange of Calling Party Number (CPN) information is addressed under DPL Issue AT&amp;T NIM 6-5.</i>	<i>This issue was not answered by the arbitrators. UTEX desires an analysis that any award is consistent with the privacy rights of the customer.</i>	See AT&T Texas’ Response to UTEX’s Exception in UTEX 15.



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	privacy rights?				
UTEX 18	If the review is based on call-by-call analysis using information from other sources what other information sources are to be used and what are the Parties’ relative responsibilities to obtain, store and exchange this information?	See contract references for Issue 1, but see principally the parties’ respective interconnection and compensation attachments and appendices	<i>This issue is addressed in the text of the Award in the section titled “Intercarrier Compensation for Traffic Involving UTEX’s ESP Customers.” The Arbitrators address the specific terms of the ICA in connection with other DPL issues. The exchange of Calling Party Number (CPN) information is addressed under DPL Issue AT&amp;T NIM 6-5.</i>	<p><i>UTEX has excepted to some rulings in the section titled “Intercarrier Compensation for Traffic Involving UTEX’s ESP Customers.” UTEX has also excepted to some of the rulings on the “other DPL issues” and to the CPN rulings in DPL Issue AT&amp;T NIM 6-5.</i></p> <p><i>In particular the award adopts AT&amp;T’s Tariff for use of calling scopes and creation of traffic types such as OEAS. AT&amp;T’s tariffs were not in the record and they do not “do” what the award claims they do. They do not provide for routing by NPA NXX and they do not have reciprocal provisions as required by 251(b)(5) and assumed by the Arbitrators. Directing use of the Tariff is improper and will only lead to future disputes.</i></p> <p><i>At the very least, if a tariff is to be used, a workshop with both AT&amp;T and the arbitrator present should be required where proper application of the tariff, if any, is determined.</i></p>	See AT&T Texas’ Response to UTEX’s Exception in UTEX 15.
UTEX 19	Is it appropriate to have different terms and conditions for Legacy (POTS) and New Technology traffic in order to properly deal with each?	See contract references for Issue 18	<i>The Arbitrators note that the ICA is adopted pursuant to FTA §§ 251 and 252, which are technology neutral and do not distinguish between “Legacy POTS” and “New Technology” traffic. The specific terms of the ICA including the interconnection and intercarrier compensation applicable to various types of traffic exchanged between the parties are addressed in connection with other DPL issues.</i>	<p><i>UTEX has excepted to some rulings in the section titled “Intercarrier Compensation for Traffic Involving UTEX’s ESP Customers.” UTEX has also excepted to some of the rulings on the “other DPL issues.”</i></p> <p><i>In particular UTEX agrees with the finding in this ruling that 251 and 252 require a technology neutral approach, but UTEX submits it was not follows and that other terms in fact discriminate against new technology traffic and specially against traffic that did not exist at the time of the Act. Such inconsistencies must be resolved.</i></p>	See AT&T Texas’ Exception Brief pp. 7-23.  See AT&T Texas’ Response Brief pp. 21-23; also 11-17 and 31-32.

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UTEX 20	Would it be unjust or unreasonable under § 201; unreasonably discriminatory or the creation of an unlawful preference under § 202; or, a violation of § 203 to apply access charges to New Technology Traffic – either directly on New Technology providers or indirectly by imposing them on UTEX?	See contract references for Issue 18	<i>The Arbitrators have addressed intercarrier compensation in the text of the Award in the section titled “Intercarrier Compensation for Traffic Involving UTEX’s ESP Customers” and in response to DPL Issues AT&amp;T NIM 6-1 through 6-16. For the reasons stated therein, the intercarrier compensation provisions approved by the Arbitrators are consistent with FTA §§ 251 and 252 and FCC rules regarding reciprocal compensation and access charges. As such, the provisions (1) do not provide for unjust or unreasonable charges, practices, classifications, or regulations under FTA § 201; (2) do not provide for unjust or unreasonable discrimination or give any undue or unreasonable preference or advantage in violation of FTA § 202; and (3) do not cause a violation of the tariff requirements of FTA § 203.</i>	<p><i>UTEX has excepted to some rulings in the section titled “Intercarrier Compensation for Traffic Involving UTEX’s ESP Customers.” UTEX has also excepted to AT&amp;T NIM 6-1 through 6-16.</i></p> <p><i>With all due respect, UTEX also disagrees that the provisions are consistent with the Act and FCC rules and UTEX contends they also violate § 202 and 203 because AT&amp;T’s access tariffs do not apply to the New Technology traffic in issue in this case.</i></p> <p><i>The clear impact and desire of the award is to discriminate against use of a technology that does not naturally have a geographic bound.</i></p> <p><i>In the “Vonage” order, the non-geographic nature of VOIP was discussed at length. It was also the focal point of UTEX’s forbearance request to the FCC against any application of 251(g) onto UTEX which may be based upon use of non-geographic numbers.</i></p> <p><i>The fact is that this award unfairly and unreasonably discriminates against uses of non-geographic technology that would otherwise qualify for reciprocal treatment under 251(b)(5).</i></p> <p><i>UTEX proposes removal of any such contract language.</i></p>	<p>See AT&amp;T Texas’ Exception Brief pp. 7-23.</p> <p>See AT&amp;T Texas’ Response Brief pp. 21-23; also 11-17 and 31-32.</p>
UTEX 21	Would it be discriminatory and therefore unlawful under § 251(c)(2)(D) or § 252(d)(1)(A)(ii) to	See contract references for Issue 18	<i>This issue is addressed in response to DPL issue UTEX 20.</i>	<p><i>UTEX excepted to the decision on UTEX 20 Please see above.</i></p>	<p>See AT&amp;T Texas’ Exception Brief pp. 7-23.</p> <p>See AT&amp;T Texas’ Response Brief pp. 21-23; also 11-17 and 31-32.</p>

Issue #	Issue Statement	Attachment & Sections	Arbitrators’ Decision	UTEX’ EXCEPTION	AT&T TEXAS’ RESPONSE TO UTEX’S EXCEPTION
	require UTEX to pay access charges for New Technology Traffic?				
UTEX 22	Is it lawful under existing rules to require UTEX to use Physical Interconnection Forms and Methods developed to address Legacy (POTS) traffic when the Interconnection will be used to facilitate exchange of New Technology Traffic?	See contract references for Issue 18	<i>The type of traffic is not necessarily the determinant of the interconnection method used in the exchange of traffic. If a desired interconnection method is technically feasible, the ILEC is required to allow interconnection using that method. The specific terms of the ICA relating to interconnection methods are addressed in connection with other DPL issues. For the reasons stated therein, the terms approved by the Arbitrators are consistent with FTA §§ 251 and 252 and relevant existing FCC rules regarding interconnection.</i>	<i>UTEX respectfully disagrees that the disposition of the interconnection issues is consistent with the Act and FCC rules. The AT&amp;T contract terms adopted in PFA Attachment B illegally restrict lawful use of New Technology and they also operate to prohibit many of the rights and duties prescribed in the PFA .</i>	See AT&T Texas’ Exception Brief pp. 7-23.  See AT&T Texas’ Response Brief pp. 21-23; also 11-17 and 31-32.
UTEX 24	Has AT&T proven that SIP based interconnection for New Technology traffic is not technically feasible as defined in FCC Rule 51.5 and applied in FCC Rule 51.305(e)?	See contract references for Issue 18	<i>This issue is addressed in the text of the Award in the section titled “Technically Feasible Forms of Interconnection.”</i>	<i>The Arbitrators delisted SIP interconnection from UTEX’s Attachment NIM 1.5.5, but included the SIP provision in 1.6.5. While UTEX is pleased the Arbitrators recognized that AT&amp;T had the burden of proving SIP interconnection is not technically feasible (PFD p. 99) UTEX is unsure where we stand. UTEX’s suggestion is that this be a topic for the 120-day “BFR” process outlined for other areas.</i>	UTEX is not capable of using SIP since AT&T Texas does not have the necessary SIP capabilities in its network. Therefore, SIP is not technically feasible. UTEX should not expect to use the BFR process as a vehicle for AT&T Texas to install a new network.
UTEX 25	Has there been successful SIP-based interconnection between carriers at a particular point in a network at a particular level of	See contract references for Issue 18	<i>This issue is addressed in the text of the Award in the section titled “Technically Feasible Forms of Interconnection.”</i>	<i>The Arbitrators delisted SIP interconnection from UTEX’s Attachment NIM 1.5.5, but included the SIP provision in 1.6.5. While UTEX is pleased the Arbitrators recognized that AT&amp;T had the burden of proving SIP interconnection is not technically feasible (PFD p. 99) UTEX is unsure where we stand. UTEX’s suggestion is that this be a topic for the 120-day “BFR” process outlined for other</i>	See AT&T Texas’ Response to UTEX’s Exception in UTEX 24.

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	quality as described in FCC Rule 51.305(d)? If so, has AT&T successfully rebutted or adequately overcome the “substantial evidence that interconnection is technically feasible at that point, or at substantially similar points, at that level of quality?”			areas.	
UTEX 26	Should AT&T be required to use SIP based interconnection for New Technology traffic? If so, what are the appropriate terms for this new interconnection form?	See contract references for Issue 18	<i>This issue is addressed in the text of the Award in the section titled “Technically Feasible Forms of Interconnection.”</i>	<i>The Arbitrators delisted SIP interconnection from UTEX’s Attachment NIM 1.5.5, but included the SIP provision in 1.6.5. While UTEX is pleased the Arbitrators recognized that AT&amp;T had the burden of proving SIP interconnection is not technically feasible (PFD p. 99) UTEX is unsure where we stand. UTEX’s suggestion is that this be a topic for the 120-day “BFR” process outlined for other areas.</i>	See AT&T Texas’ Response to UTEX’s Exception in UTEX 24.
UTEX 27	What are the parties’ rights, duties and responsibilities under §§ 201, 251 and 252 and current FCC rules relating to how they will physically connect their signaling	See contract references for Issue 1, but see principally the parties’ respective interconnection and compensation attachments and appendices	<i>This issue is addressed in the text of the Award in the section titled “Technically Feasible Forms of Interconnection.”</i>	<i>UTEX has excepted to some of the holdings in the section titled “Technically Feasible Forms of Interconnection.”</i>  <i>UTEX has proposed SS-7 language in its NIM Rider to implement the award consistent with the award discussion and requests its adoption.</i>	UTEX cannot add the language it proposes in its NIM Rider, which was not included in the contract language approved in Order No. 30. In addition, UTEX misreads the Proposal for Award, misconstruing the Arbitrators’ rulings to give UTEX a right to “interconnect with AT&T’s signaling network and databases and to establish B-Links without recourse to AT&T’s tariffs.” The Proposal for Award did precisely the opposite, stating: “to the extent UTEX seeks access to AT&T Texas B-

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	equipment if and when signaling is and should be handled via a separate physical set of facilities?				links, UTEX may not purchase those network elements at TELRIC prices.” Thus, consistent with the Commission’s ruling in Docket No. 33323, the Arbitrators are requiring UTEX to purchase B-links out of AT&T Texas’ tariff and have said nothing in the Proposal for Award that would attempt to undo the FCC’s declassification of SS7 signaling or LIDB databases as UNEs. The Arbitrators merely said that FCC’s TELRIC pricing rules apply to interconnection, citing 47 C.F.R. § 51.501(a). Rule 51.501(a) says precisely that: “These rules in this subpart apply to the pricing of network elements, interconnection, and methods of obtaining access to unbundled elements.” But those pricing rules do not override the FCC’s decisions to declassify network elements, and whenever network elements are declassified, they are available only through tariffed pricing.
UTEX 28	When each party is acting solely as an LEC, can one LEC be required to “buy” signaling from the other LEC as a “customer” without making this purchasing obligation mutual and reciprocal on the other LEC as well?	See contract references for Issue 27	<i>This issue is addressed in the text of the Award in the section titled “Signaling.”</i>	<i>UTEX has excepted to some of the holdings in the section titled “Signaling”</i>  <i>UTEX has proposed SS-7 language in its NIM Rider to implement the award consistent with the award discussion and requests its adoption.</i>	See AT&T Texas’ Response to UTEX’s Exception in UTEX 27.

Issue #	Issue Statement	Attachment & Sections	Arbitrators’ Decision	UTEX’ EXCEPTION	AT&T TEXAS’ RESPONSE TO UTEX’S EXCEPTION
UTEX 29	If one or both of the LECs must “buy” signaling from the other as a customer, are the terms and conditions for this arrangement governed by § 251(b)(5) and § 252(d)(2) reciprocal compensation/transport and termination or § 251(c)(2) and § 252(d)(1) Interconnection, or must signaling interconnection instead be obtained as part of a § 251(g) “Continued” Exchange Access and Interconnection Requirement?	See contract references for Issue 27	<i>This issue is addressed in the text of the Award in the section titled “Signaling.”</i>	<i>UTEX has excepted to some rulings in the section titled “Signaling.”</i>  <i>UTEX has proposed SS-7 language in its NIM Rider to implement the award consistent with the award discussion and requests its adoption.</i>	See AT&T Texas’ Response to UTEX’s Exception in UTEX 27.

Issue #	Issue Statement	Attachment & Sections	Arbitrators’ Decision	UTEX’ EXCEPTION	AT&T TEXAS’ RESPONSE TO UTEX’S EXCEPTION
UTEX 30	Does or can the routing of a call determine the retail or intercarrier compensation rating of that call?	See contract references for Issue 1, but see principally the parties’ respective interconnection and compensation attachments and appendices and even more particularly UTEX’s Attachment NIM, along with its Appendices, Attachments and Exhibits, including the Call Flow Diagrams in Exhibit 4 to Appendix 2 to NIM	<i>The Arbitrators have addressed intercarrier compensation for various types of traffic in AT&amp;T NIM issues 6-1 through 6-16.</i>	<i>UTEX has excepted to some rulings in AT&amp;T NIM Issues 6-1 through 6-16.</i>  <i>UTEX also states its position of this issue above in UTEX 15, 16, 17 and 18.</i>	See AT&T Texas’ Response to UTEX’s Exception in UTEX 15.
UTEX 31	How will each of the call types shown in the call flow diagrams set out in UTEX’s proposed ICA, Exhibits 3 and 4 to Appendix 2 to NIM be routed?	See contract references for Issue 30	<i>The Arbitrators find that UTEX’s assertion that its written textual terms comprehensively address trunking requirements calls into question the need for diagrams. The Arbitrators note that diagrams have not been needed for any of the ICAs arbitrated at the Commission to date, and that AT&amp;T Texas has expressed opposition to their inclusion here. Accordingly, the Arbitrators do not adopt UTEX’s call-flow diagrams for inclusion in this ICA.</i>  <i>To the extent the parties find such diagrams useful in administering the ICA, the Arbitrators suggest that they be jointly developed by the Parties. Absent such</i>	<i>UTEX continues to believe that call flow diagrams will be critical to a full and complete understanding of how calls will be signaled, routed, rated and billed. If, however, the Arbitrators adopt UTEX’s proposed Rider that is contained in Attachment A to these Exceptions(and in particular the provision establishing that the Rider takes precedence) then we will drop the issue.</i>  <i>UTEX has proposed language in the NIM Rider that adopts the Award with respect to the different call types found by the Arbitrators. UTEX requests its language be adopted if UTEX’s other</i>	UTEX cannot add the language on call types that it proposes in its NIM Rider, which was not included in the proposed contract language authorized by Order No. 30. The Arbitrators properly excluded call flow diagrams from the ICA.

Issue #	Issue Statement	Attachment & Sections	Arbitrators’ Decision	UTEX’ EXCEPTION	AT&T TEXAS’ RESPONSE TO UTEX’S EXCEPTION
			<i>development, it is unlikely that a common understanding of such diagrams could be achieved.</i>	<i>exceptions to the award are denied. UTEX did not use diagrams as we were unable to establish a working session with AT&amp;T. UTEX desires to achieve certainty for all call types and to the extent UTEX’s language and AT&amp;T’s language are at odds, UTEX requests a workshop to be established to discern the Arbitrators’ intent for all call types.</i>	
UTEX 32	Is it appropriate to require separate routing of Legacy and New Technology Traffic?	See contract references for Issue 30	<i>The Arbitrators agree with AT&amp;T Texas that New Technology is not a defined term in this ICA, and further find that current law provides no basis for the routing of traffic on a technology-specific basis. Thus, the Arbitrators do not adopt language addressing this issue.</i>	<i>UTEX continues to believe that there is a benefit to referencing New Technology since the Act has a statutory preference for it in § 157. As a practical matter for so long as the Arbitrators actualize the ruling on separate trunks for ESP traffic, transit traffic and jointly provided access the issue will not be worth further debate. But as noted in other places in the Exceptions many of the AT&amp;T terms adopted in PFA Attachment B directly frustrate the trunking holdings in the PFA.</i>	UTEX presents no reason for the Arbitrators to revisit their ruling that “New Technology” traffic should not be a term utilized in the ICA.
UTEX 33	How will each of the call types shown in the call flow diagrams set out UTEX’s proposed ICA, Exhibit 4 to Appndix 2 to NIM be rated??	See contract references for Issue 1, but see principally the parties’ respective interconnection and compensation attachments and appendices and even more particularly Attachment NIM, along with its Appendices, Attachments and Exhibits, including the Call Flow Diagrams in Exhibit 4 to Appendix 2 to NIM	<i>The Arbitrators have addressed this issue under DPL Issue UTEX 31.</i>  <i>Additionally, the Arbitrators find that UTEX’s proposed diagrams lack sufficient specificity for inclusion in the ICA in their current form, as they are devoid of locational information. The Arbitrators hold that, absent such specificity, it is impossible to rate calls; current law recognizes geographical locations and end-to-end analysis as key determinants of call rating. Accordingly, the Arbitrators do not adopt UTEX’s call-flow diagrams for inclusion in this ICA.</i>	<i>UTEX continues to believe that call flow diagrams will be critical to a full and complete understanding of how calls will be signaled, routed, rated and billed. If, however, the Arbitrators adopt UTEX’s proposed Rider that is contained in Attachment A to these Exceptions (and in particular the provision establishing that the Rider takes precedence) then we will drop the issue.</i>  <i>UTEX did not use diagrams as we were unable to establish a working session with AT&amp;T. UTEX desires to achieve certainty for all call types and to the extent UTEX’s language and AT&amp;T’s language are at odds, UTEX requests a workshop to be established to discern the Arbitrators’ intent for all call types</i>	See AT&T Texas’ Response to UTEX’s Exception in UTEX 31.



Issue #	Issue Statement	Attachment & Sections	Arbitrators’ Decision	UTEX’ EXCEPTION	AT&T TEXAS’ RESPONSE TO UTEX’S EXCEPTION
UTEX 34	<p>Is the call § 201 traffic?</p> <p>Is the call § 251-252 traffic?</p> <p>Is the call carved out by § 251(g) so that it can lawfully be treated as Exchange Access traffic? If the call can lawfully be treated as Exchange Access traffic, who is the access customer of one, the other or both of the two LECs?</p> <p>Is the call one that “simultaneously implicates the regimes of both § 201 and of §§ 251-252” and falls within the “intersection” of all of § 201 and §§ 251-252 so that “[n]either regime is a subset of the other?”</p> <p>If there is a third category besides Telephone Exchange and Exchange Access what is that category and what</p>	See contract references for Issue 33	<i>This issue of intercarrier compensation for Enhanced Service Provider Traffic is addressed in the text of the Award in the section titled “Inter-carrier Compensation for Traffic Involving UTEX’s ESP Customers.” The Arbitrators conclude that AT&amp;T Texas has the obligation to interconnect with UTEX pursuant to sections 251 and 252 of the FTA. For the reasons stated in the text of the Award and DPLs relating to intercarrier compensation, specifically AT&amp;T NIM 6-1 through 6-16, the intercarrier compensation provisions approved by the Arbitrators are consistent with FTA §§ 251 and 252 and FCC rules regarding reciprocal compensation and access charges.</i>	<i>UTEX has excepted to some rulings in the section titled “Inter-carrier Compensation for Traffic Involving UTEX’s ESP Customers” and to DPL Issues AT&amp;T NIM 6-1 through 6-16.</i>	<p>See AT&amp;T Texas’ Exception Brief pp. 7-23.</p> <p>See AT&amp;T Texas’ Response Brief pp. 21-23; also 11-17 and 31-32.</p>

Issue #	Issue Statement	Attachment & Sections	Arbitrators’ Decision	UTEX’ EXCEPTION	AT&T TEXAS’ RESPONSE TO UTEX’S EXCEPTION
	is the rate?				
UTEX 35	Has the FCC promulgated a new rule, or reinterpreted its rules, that would change or amend its declaration that there are currently several different pricing distinctions based on identity and/or use?	See contract references for Issue 33	<i>The Arbitrators have addressed intercarrier compensation in the text of the Award in the section titled “Inter-carrier Compensation for Traffic Involving UTEX’s ESP Customers” and in response to DPL Issues AT&amp;T NIM 6-1 through 6-16. To the extent that this issue is not addressed in those sections of the Award, the Arbitrators have concluded that resolution of the issue is not necessary to determine the appropriate ICA language for intercarrier compensation.</i>	<i>UTEX has excepted to some rulings in the section titled “Inter-carrier Compensation for Traffic Involving UTEX’s ESP Customers” and to DPL Issues AT&amp;T NIM 6-1 through 6-16. UTEX has also excepted to the practice of not resolving an issue based on the notion “is not necessary to determine the appropriate ICA language” relating to a topic.</i>	See AT&T Texas’ Exception Brief pp. 7-23.  See AT&T Texas’ Response Brief pp. 21-23; also 11-17 and 31-32.
UTEX 36	Did the decisions in the AT&T Declaratory Ruling and the credit card declaratory rulings that if IP is used only for transmission and there is no change in content or an offer of enhanced function then the service is not an enhanced/information service but is instead a telecommunications service subject to the access charge rules constitute a change in law, or was it instead an interpretation of current rules?	See contract references for Issue 33	<i>UTEX has not identified any specific ICA language to which this issue relates. The Arbitrators conclude, therefore, that resolution of this issue is not necessary.</i>	<i>UTEX has excepted to the practice of not resolving an issue based on the notion “is not necessary to determine the appropriate ICA language” relating to a topic.</i>  <i>Specifically, this legal question is aimed at determining who is eligible for an ESP status which is required under the PFA to avoid future disputes.</i>	See AT&T Texas’ Response Brief pp. 21-23

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UTEX 37	Has the FCC changed the law so that its description stated in FCC 01-132 is no longer correct?	See contract references for Issue 33	<i>The Arbitrators have addressed intercarrier compensation in the text of the Award in the section titled “Inter-carrier Compensation for Traffic Involving UTEX’s ESP Customers” and in response to DPL Issues AT&amp;T NIM 6-1 through 6-16. To the extent that this issue is not addressed in those sections of the Award, the Arbitrators have concluded that resolution of the issue is not necessary to determine the appropriate ICA language for intercarrier compensation.</i>	<i>UTEX has excepted to some rulings in the section titled “Inter-carrier Compensation for Traffic Involving UTEX’s ESP Customers” and to DPL Issues AT&amp;T NIM 6-1 through 6-16. UTEX has also excepted to the practice of not resolving an issue based on the notion “is not necessary to determine the appropriate ICA language” relating to a topic.</i>	See AT&T Texas’ Exception Brief pp. 7-23.  See AT&T Texas’ Response Brief pp. 21-23; also 11-17 and 31-32.
UTEX 38	Was the FCC’s statement in 2004 in FCC 04-36 that all uses of the PSTN should contribute on an equal basis part of a new rule that has gone into effect?	See contract references for Issue 33	<i>The Arbitrators have addressed intercarrier compensation in the text of the Award in the section titled “Inter-carrier Compensation for Traffic Involving UTEX’s ESP Customers” and in response to DPL Issues AT&amp;T NIM 6-1 through 6-16. To the extent that this issue is not addressed in those sections of the Award, the Arbitrators have concluded that resolution of the issue is not necessary to determine the appropriate ICA language for intercarrier compensation.</i>	<i>UTEX has excepted to some rulings in the section titled “Inter-carrier Compensation for Traffic Involving UTEX’s ESP Customers” and to DPL Issues AT&amp;T NIM 6-1 through 6-16. UTEX has also excepted to the practice of not resolving an issue based on the notion “is not necessary to determine the appropriate ICA language” relating to a topic</i>	See AT&T Texas’ Exception Brief pp. 7-23.  See AT&T Texas’ Response Brief pp. 21-23; also 11-17 and 31-32.
UTEX 39	If the statement in FCC 04-36 was an interpretation of current rules did that statement mean that <u>access</u> charges are the rate at which “all” minutes should equally contribute?	See contract references for Issue 33	<i>The Arbitrators have addressed intercarrier compensation in the text of the Award in the section titled “Inter-carrier Compensation for Traffic Involving UTEX’s ESP Customers” and in response to DPL Issues AT&amp;T NIM 6-1 through 6-16. To the extent that this issue is not addressed in those sections of the Award, the Arbitrators have concluded that resolution of the issue is not necessary to determine the appropriate ICA language for intercarrier compensation.</i>	<i>UTEX has excepted to some rulings in the section titled “Inter-carrier Compensation for Traffic Involving UTEX’s ESP Customers” and to DPL Issues AT&amp;T NIM 6-1 through 6-16. UTEX has also excepted to the practice of not resolving an issue based on the notion “is not necessary to determine the appropriate ICA language” relating to a topic.</i>	See AT&T Texas’ Exception Brief pp. 7-23.  See AT&T Texas’ Response Brief pp. 21-23; also 11-17 and 31-32.
UTEX 40	Did the traffic involved in this issue exist at the time the 1996 amendments were inserted into the	See contract references for Issue 33	<i>UTEX has not identified any specific ICA language to which this issue relates. The Arbitrators conclude, therefore, that resolution of this issue is not necessary. The Arbitrators address the specific terms of the ICA in connection with other DPL issues.</i>	<i>UTEX has excepted to the practice of not resolving an issue based on the notion “is not necessary to determine the appropriate ICA language” relating to a topic.</i>  <i>Please see Exceptions Section 5.</i>	See AT&T Texas’ Response Brief pp. 21-23.

Issue #	Issue Statement	Attachment & Sections	Arbitrators’ Decision	UTEX’ EXCEPTION	AT&T TEXAS’ RESPONSE TO UTEX’S EXCEPTION
	Act?				
UTEX 41	Given that the traffic in issue is between LECs, what law allows it to be carved out from § 251(b)(5)?	See contract references for Issue 33	<i>The Arbitrators have addressed intercarrier compensation in the text of the Award in the section titled “Inter-carrier Compensation for Traffic Involving UTEX’s ESP Customers” and in response to DPL Issues AT&amp;T NIM 6-1 through 6-16. To the extent that this issue is not addressed in those sections of the Award, the Arbitrators have concluded that resolution of the issue is not necessary to determine the appropriate ICA language for intercarrier compensation.</i>	<i>UTEX has excepted to some rulings in the section titled “Inter-carrier Compensation for Traffic Involving UTEX’s ESP Customers” and to DPL Issues AT&amp;T NIM 6-1 through 6-16. UTEX has also excepted to the practice of not resolving an issue based on the notion “is not necessary to determine the appropriate ICA language” relating to a topic.</i>	See AT&T Texas’ Exception Brief pp. 7-23.  See AT&T Texas’ Response Brief pp. 21-23; also 11-17 and 31-32.
UTEX 42	Under current law can any enhanced/information services that are not voluntarily using access or provided via a Telephone Toll Service be lawfully subjected to the Exchange Access regime?	See contract references for Issue 33	<i>This issue of intercarrier compensation for Enhanced Service Provider Traffic is addressed in the text of the Award in the section titled “Inter-carrier Compensation for Traffic Involving UTEX’s ESP Customers.”</i>	<i>UTEX has excepted to some rulings in the section titled “Inter-carrier Compensation for Traffic Involving UTEX’s ESP Customers” and to DPL Issues AT&amp;T NIM 6-1 through 6-16.</i>  <i>Additionally, the question asked by this Issue is not answered in the referred to discussion in the PFA. No lawful analysis was performed as to why ESPs can be changed access for call types that do not originate on the PSTN Nor was one done to capture call types that did not exist at the time of the Act.</i>	See AT&T Texas’ Exception Brief pp. 7-23.  See AT&T Texas’ Response Brief pp. 21-23; also 11-17 and 31-32.
UTEX 43	Did the Act codify the ESP Exemption with the effect that the PUC cannot lawfully impose Exchange Access charges directly or indirectly by securing them from an LEC like UTEX?	See contract references for Issue 33	<i>The Arbitrators have addressed intercarrier compensation in the text of the Award in the section titled “Inter-carrier Compensation for Traffic Involving UTEX’s ESP Customers” and in response to DPL Issues AT&amp;T NIM 6-1 through 6-16. To the extent that this issue is not addressed in those sections of the Award, the Arbitrators have concluded that resolution of the issue is not necessary to determine the appropriate ICA language for intercarrier compensation.</i>	<i>UTEX has excepted to some rulings in the section titled “Inter-carrier Compensation for Traffic Involving UTEX’s ESP Customers” and to DPL Issues AT&amp;T NIM 6-1 through 6-16. UTEX has also excepted to the practice of not resolving an issue based on the notion “is not necessary to determine the appropriate ICA language” relating to a topic.</i>	See AT&T Texas’ Exception Brief pp. 7-23.  See AT&T Texas’ Response Brief pp. 21-23; also 11-17 and 31-32.

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UTEX 44	Do the Act and current rules incorporate and apply technological considerations to determine the regulatory classification of a service? For example do the definitions of “enhanced service” and “information service” rest on the technology used to provide service and the capabilities offered by that technology?	See contract references for Issue 33	<i>The Arbitrators have addressed intercarrier compensation in the text of the Award in the section titled “Inter-carrier Compensation for Traffic Involving UTEX’s ESP Customers” and in response to DPL Issues AT&amp;T NIM 6-1 through 6-16. To the extent that this issue is not addressed in those sections of the Award, the Arbitrators have concluded that resolution of the issue is not necessary to determine the appropriate ICA language for intercarrier compensation.</i>	<i>UTEX has excepted to some rulings in the section titled “Inter-carrier Compensation for Traffic Involving UTEX’s ESP Customers” and to DPL Issues AT&amp;T NIM 6-1 through 6-16. UTEX has also excepted to the practice of not resolving an issue based on the notion “is not necessary to determine the appropriate ICA language” relating to a topic.</i>	See AT&T Texas’ Exception Brief pp. 7-23.  See AT&T Texas’ Response Brief pp. 21-23; also 11-17 and 31-32.
UTEX 45	Can either the ESP or UTEX be subjected to access charges under Rule 69.5?”	See contract references for Issue 33	<i>The Arbitrators have addressed intercarrier compensation in the text of the Award in the section titled “Inter-carrier Compensation for Traffic Involving UTEX’s ESP Customers” and in response to DPL Issues AT&amp;T NIM 6-1 through 6-16. To the extent that this issue is not addressed in those sections of the Award, the Arbitrators have concluded that resolution of the issue is not necessary to determine the appropriate ICA language for intercarrier compensation.</i>	<i>UTEX has excepted to some rulings in the section titled “Inter-carrier Compensation for Traffic Involving UTEX’s ESP Customers” and to DPL Issues AT&amp;T NIM 6-1 through 6-16. UTEX has also excepted to the practice of not resolving an issue based on the notion “is not necessary to determine the appropriate ICA language” relating to a topic.</i>	See AT&T Texas’ Exception Brief pp. 7-23.  See AT&T Texas’ Response Brief pp. 21-23; also 11-17 and 31-32.
UTEX 46	If the traffic in issue is subject to the Exchange Access regime, then what law allows a departure from the FCC’s statement in	See contract references for Issue 33	<i>The Arbitrators have addressed intercarrier compensation in the text of the Award in the section titled “Inter-carrier Compensation for Traffic Involving UTEX’s ESP Customers” and in response to DPL Issues AT&amp;T NIM 6-1 through 6-16. To the extent that this issue is not addressed in those sections of the Award, the Arbitrators have concluded</i>	<i>UTEX has excepted to some rulings in the section titled “Inter-carrier Compensation for Traffic Involving UTEX’s ESP Customers” and to DPL Issues AT&amp;T NIM 6-1 through 6-16. UTEX has also excepted to the practice of not resolving an issue based on the notion “is not necessary to determine the appropriate ICA language” relating</i>	See AT&T Texas’ Exception Brief pp. 7-23.  See AT&T Texas’ Response Brief pp. 21-23; also 11-17 and 31-32.

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	Note 92 of the AT&T Declaratory Ruling?		<i>that resolution of the issue is not necessary to determine the appropriate ICA language for intercarrier compensation.</i>	<i>to a topic.</i>	
UTEX 52	Should UTEX be required to use AT&T’s OSS when that system does not have a method to successfully pre-order, order or obtain provisioning a specific UNE or interconnection form that is provided for in this Agreement?	UTEX GTC §§ 51.49, 51.54, 51.55, 51.90, 51.91, 51.108, 51.109, 51.111; Attachment 5 Liquidated Damages; Attachment 2 Raw Material UNE §§ 5.3, 8.8 All AT&T provisions addressing OSS	<i>This issue is addressed in the text of the Award in the section titled “OSS and Ordering.”</i>	<p><i>UTEX has excepted to some rulings in the section titled “OSS and Ordering.”</i></p> <p><i>In particular UTEX excepts to any finding that AT&amp;T’s current OSS currently incorporates the decisions of this Award.</i></p> <p><i>UTEX has proposed Attachment C as its OSS compliance Language as ordered by the Arbitrators.</i></p>	<p>See AT&amp;T Texas’ Exception Brief pp. 33-34.</p> <p>See AT&amp;T Texas’ Response Brief pp. 17-20.</p>
UTEX 53	Should UTEX be effectively precluded from obtaining a specific form of interconnection or a particular UNE pending AT&T’s internal development of an electronic method?	See contract references for Issue 52	<i>This issue is addressed in the text of the Award in the section titled “OSS and Ordering.”</i>	<p><i>UTEX has excepted to some rulings in the section titled “OSS and Ordering.”</i></p> <p><i>In particular UTEX excepts to any finding that AT&amp;T’s current OSS currently incorporates the decisions of this Award.</i></p> <p><i>UTEX has proposed Attachment C as its OSS compliance Language as ordered by the Arbitrators.</i></p>	<p>See AT&amp;T Texas’ Exception Brief pp. 33-34.</p> <p>See AT&amp;T Texas’ Response Brief pp. 17-20.</p>
UTEX 54	Should UTEX be able to submit a manual form to pre-order, order or secure provisioning of a specific form of interconnection or a particular UNE until AT&T development	See contract references for Issue 52	<i>This issue is addressed in the text of the Award in the section titled “OSS and Ordering.”</i>	<p><i>UTEX has excepted to some rulings in the section titled “OSS and Ordering.”</i></p> <p><i>In particular UTEX excepts to any finding that AT&amp;T’s current OSS currently incorporates the decisions of this Award.</i></p> <p><i>UTEX has proposed Attachment C as its OSS compliance Language as ordered by the</i></p>	<p>See AT&amp;T Texas’ Exception Brief pp. 33-34.</p> <p>See AT&amp;T Texas’ Response Brief pp. 17-20.</p>

Issue #	Issue Statement	Attachment & Sections	Arbitrators’ Decision	UTEX’ EXCEPTION	AT&T TEXAS’ RESPONSE TO UTEX’S EXCEPTION
	a workable electronic method?			<i>Arbitrators.</i>	
UTEX 55	Can AT&T refuse to not cooperate with UTEX to develop an acceptable manual form to pre-order, order or secure provisioning of a specific form of interconnection or a particular UNE, and then use the lack of a form to refuse and frustrate UTEX’s attempts to secure that interconnection or UNE?	See contract references for Issue 52	<i>This issue is addressed in the text of the Award in the section titled “OSS and Ordering.”</i>	<i>UTEX has excepted to some rulings in the section titled “OSS and Ordering.”</i>  <i>In particular UTEX excepts to any finding that AT&amp;T’s current OSS currently incorporates the decisions of this Award.</i>  <i>UTEX has proposed Attachment C as its OSS compliance Language as ordered by the Arbitrators.</i>	See AT&T Texas’ Exception Brief pp. 33-34.  See AT&T Texas’ Response Brief pp. 17-20.
UTEX 56	Do AT&T’s proposed Performance Standards provide sufficient incentive for AT&T to not breach any and all parts of the ICA and particularly for the forms of interconnection or particular UNEs for which there are not yet specific standards?	UTEX GTC §§ 51.49, 51.54, 51.55, 51.90, 51.91, 51.108, 51.109, 51.111; Attachment 5 Liquidated Damages; Attachment 2 Raw Material UNE §§ 5.3, 8.8 AT&T PM Rules and all references to performance standards and payments (AT&T Attachment 17)	<i>This issue is addressed in the text of the Award in the section titled “Performance Measures and Liquidated Damages.”</i>	<i>Please see UTEX <b>Exceptions to the PFA Section 7.1.</b></i>	See AT&T Texas’ Response Brief pp. 23-26.

Issue #	Issue Statement	Attachment & Sections	Arbitrators’ Decision	UTEX’ EXCEPTION	AT&T TEXAS’ RESPONSE TO UTEX’S EXCEPTION
UTEX 57	Do AT&T’s proposed Performance Standards provide sufficient compensation to UTEX in the event of an AT&T breach of any parts of the ICA and particularly for the forms of interconnection or particular UNEs for which there are not yet specific standards?	See contract references for Issue 56.	<i>This issue is addressed in the text of the Award in the section titled “Performance Measures and Liquidated Damages.”</i>	<i>UTEX has excepted to some rulings in the section titled “Performance Measures and Liquidated Damages.”</i>  <i>Please see UTEX <b>Exceptions to the PFA Section 7.1.</b></i>	See AT&T Texas’ Response Brief pp. 23-26.
UTEX 58	Is it appropriate to have Liquidated Damages for the specific types of Interconnection methods proposed by UTEX, given that they are not addressed by AT&T’s proposed Performance Standards?	See contract references for Issue 56	<i>This issue is addressed in the text of the Award in the section titled “Performance Measures and Liquidated Damages.”</i>	<i>UTEX has excepted to some rulings in the section titled “Performance Measures and Liquidated Damages.”</i>  <i>Please see UTEX <b>Exceptions to the PFA Section 7.1.</b></i>	See AT&T Texas’ Response Brief pp. 23-26.
UTEX 59	Is it appropriate to have Liquidated Damages for sub-loops and the attendant means to access them (e.g., SVS), given that they are not	See contract references for Issue 56	<i>This issue is addressed in the text of the Award in the section titled “Performance Measures and Liquidated Damages.”</i>	<i>UTEX has excepted to some rulings in the section titled “Performance Measures and Liquidated Damages.”</i>  <i>Please see UTEX <b>Exceptions to the PFA Section 7.1.</b></i>	See AT&T Texas’ Response Brief pp. 23-26.



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	addressed by AT&T’s proposed Performance Standards?				
UTEX 60	Is it appropriate to have Liquidated Damages for loops that run to a NID on a pole and the attendant means to access them, given that they are not addressed by AT&T’s proposed Performance Standards?	See contract references for Issue 56	<i>This issue is addressed in the text of the Award in the section titled “Performance Measures and Liquidated Damages.”</i>	<i>UTEX has excepted to some rulings in the section titled “Performance Measures and Liquidated Damages.”</i>  <i>Please see UTEX <b>Exceptions to the PFA Section 7.1.</b></i>	See AT&T Texas’ Response Brief pp. 23-26.
AT&T GTC Issue 5	Should UTEX be allowed to enter AT&T’s premises to perform work for itself?	GTC § 1.2.1	<i>The Arbitrators find that in no case has an ICA approved by the Commission allowed a CLEC to perform work directly on AT&amp;T Texas’s or any other ILEC’s facilities, and concurs with AT&amp;T that such a provision would pose unacceptable risks for the ILEC. The Arbitrators further find that, should AT&amp;T Texas refuse to perform an element combination provided for in the ICA, UTEX can seek relief through a post-interconnection dispute petition.</i>	<i>UTEX excepts to the rejection of UTEX’s position that if AT&amp;T refuses to perform combinations then UTEX can enter and perform the combination for itself. First, this violates § 251(c)(3) which provides in pertinent part that “An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service.” AT&amp;T will not combine and will not let UTEX combine either. Instead, under the Award UTEX will have to seek relief from the PUC, with the requisite delay and expense. If the Arbitrators do not reverse this decision they must at least provide a meaningful and compensatory liquidated remedy for a wrongful refusal to combine.</i>	<p>First, AT&amp;T recognizes that it has combining obligations; if a CLEC requests 2 elements be combined, it will do so as long as it is technically feasible and does not cause harm to either AT&amp;T’s network or that of any other CLEC riding the AT&amp;T network.</p> <p>Second, AT&amp;T has already provided CLECs with several combining options. If UTEX requests something new or different than what is already a common combination offered by AT&amp;T, then UTEX cannot a) simply insert itself and work directly on AT&amp;T or another ILEC’s facilities; and b) it can formally request such combination from AT&amp;T via the BFR process.</p> <p>Finally, safety is the utmost important reason why CLECs, like UTEX, cannot simply walk into an AT&amp;T facility and perform its own work. UTEX does not have AT&amp;T network knowledge or</p>

Issue #	Issue Statement	Attachment & Sections	Arbitrators’ Decision	UTEX’ EXCEPTION	AT&T TEXAS’ RESPONSE TO UTEX’S EXCEPTION
					<p>experience working and maintaining the AT&amp;T network; nor is it privy to the intricacies which are required to support the network.</p> <p>The Arbitrators ruled correctly on this issue; UTEX should not be allowed direct access to either AT&amp;T’s or another ILEC’s network facilities.</p>
AT&T GTC Issue 21	Should the agreement contain provisions regarding services in the agreement that are missing prices?	GTC AT&T § 4.6, 8.10	<p><i>The Arbitrators conclude that AT&amp;T Texas’s proposed language should be included in the ICA with the following modifications:</i></p> <p><i>“The Parties acknowledge and agree that they do not intend to include products and services in this Agreement that do not have corresponding rates and charges. Accordingly, if this Agreement is executed and/or approved by the Commission and the Parties later discover that a product or service is included in this Agreement without an associated rate or charge, the Parties agree that they will agree upon a rate or charge to include in this Agreement before the product or service is provided or performed. However, if the Commission has previously approved a rate or charge for the product or service in another ICA for AT&amp;T Texas, then the parties shall use the most recent rate or charge approved by the Commission. If the Parties cannot agree to a rate or charge or if a party disputes the rate or charge previously approved by the Commission, either Party may pursue dispute resolution under the applicable provisions of this Agreement.”</i></p> <p><i>AT&amp;T Texas’s language, as modified by the Arbitrators, is reasonable because it provides certainty to the parties regarding applicable rates or charges prior to the provision or performance of a product or</i></p>	<p><i>UTEX excepts to this decision only to the extent it would result in a denial of or significant delay in implementation of specific rights granted in the PFA. For example, if the Arbitrators reject UTEX’s position on the pricing for SS7 interconnection, including B-Links, then the Arbitrators must prescribe a price.</i></p> <p><i>Alternatively, the Arbitrators could amend the language they have prescribed to say, in pertinent part, that <u>“However, if the Commission has previously approved a rate or charge for the product or service in another ICA for AT&amp;T Texas, then the parties shall use the most recent rate or charge approved by the Commission <b>Provided further, if there was a TELRIC-based price for a specific element that has been declassified as a UNE, such as, for example, SS7 transport, then the prior rate shall apply when that element is used for interconnection.”</b></u></i></p> <p><i><b><u>The Arbitrators could also prescribe an interim price subject to true-up and then create a TELRIC Pricing phase as a new Arbitration.</u></b></i></p>	<p>UTEX is once again attempting to ignore the fact that once a UNE has been declassified, it is no longer TELRIC rate applicable. The UNE is gone as a UNE; if it is available as a network element, then that pricing applies. The Commission does not have the authority to either reinstate a TELRIC rate, nor does the commission have the authority to establish an interim price (going back to TELRIC) for a declassified UNE as UTEX suggests.</p>

Issue #	Issue Statement	Attachment & Sections	Arbitrators’ Decision	UTEX’ EXCEPTION	AT&T TEXAS’ RESPONSE TO UTEX’S EXCEPTION
			<i>service. Use of the most recent rate or charge approved by the Commission in another ICA for AT&amp;T Texas is reasonable because it allows a party to request a product or service without requiring dispute resolution and because the cost for AT&amp;T Texas to provide the product or service at any given time should not vary from CLEC to CLEC. Finally, the Arbitrators have approved appropriate dispute resolution procedures elsewhere in this award.</i>		
AT&T GTC Issue 22	Should the GTCs address the parties’ obligations with respect to transit service?	GTC AT&T § 8.11	<i>The Arbitrators conclude that the obligations with respect to transit service are addressed in the network interconnection and intercarrier compensation attachments in the ICA, and therefore decline to include language regarding transit service in the General Terms and Conditions. The issue of whether call diagrams should be incorporated in the ICA is addressed under DPL Issues UTEX 31 and UTEX 33 above.</i>	<i>UTEX excepts to this decision because although it may not be necessary to include transit terms in the GTCs, there must be comprehensive transit terms somewhere in the Agreement and at present there are not. Specifically, while transit terms are prescribed in one area of the award, they could also be read to be removed via another (such as ITR). UTEX has proposed more complete transit terms in UTEX Exceptions Attachment A and has also proposed to add language to all other attachments that may conflict with the award (See UTEX Exhibit D.</i>	<p>UTEX cannot add the language on Transit that it proposes in its NIM Rider, which was not included in the contract language approved in Order No. 30. The Commission, under its determination on this issue, decided appropriate placement within the ICA for transit terms. That placement is correct in that terms for transit services are appropriately contained in the network interconnection and intercarrier compensation attachments to the ICA.</p> <p>See AT&amp;T Texas’ Response Brief at pp. 11</p>
AT&T GTC Issue 65	Should the agreement refer to end users as “End Users, End Use Customers, or Customers” as UTEX proposes, or as End Users?	GTC Various sections, AT&T §§ 51.1.40  UTEX §§ 6.6, 7.1.2, 7.3.1.1, 16.1.1, 16.3.1, 17.2, 34.2, 51.29, 51.31, 51.32	<i>This issue is addressed in the text of the Award in the section titled “End User Definition.”</i>	<p><i>UTEX excepts to the decisions in the PFA section titled “End User Definition.”</i></p> <p><i>Specifically ESPs are end users under the act because they are not carriers. The end user vs. carrier is a Boolean issue and the current commission decision requires ESPs to be treated as end users in some respects but as carriers for others. This is unlawful.</i></p> <p><i>UTEX’s end user definition should be adopted.</i></p>	<p>The Arbitrators correctly concluded that AT&amp;T’s definition accurately reflects what an End User or End User Customer is</p> <p>First, AT&amp;T proposed the exact same definition as was previously proposed by AT&amp;T in Docket No. 28821, and was accepted by the PUC.</p> <p>Second, the ESP is an End user only for the limited purpose as the ultimate retail consumer of the service, and not using the service as an input to a service it provides to its customers, then yes, it falls into the category of end user customer. In its 1989 NPRM on Amendments to Part 69 - its access charge rules - the FCC recognized that its</p>

Issue #	Issue Statement	Attachment & Sections	Arbitrators’ Decision	UTEX’ EXCEPTION	AT&T TEXAS’ RESPONSE TO UTEX’S EXCEPTION
					treatment of ESPs as end users was a fiction used to allow them to purchase business lines - for their own consumption - rather than pay access charges. The FCC has recognized that ESPs are not end users in other capacities. UTEX's ESP customers are not consuming UNE loops as "end users" - they are routing traffic originated by others and, as such, are not "end users."
AT&T Resale-1	Should the Resale attachment refer to the term “End Users”, or to UTEX’s undefined terms “Users” or “customers”?	AT&T Resale §§ 1.15, , 3.7, 3.11, 4.1.2, 6, 7.1.1, 7.1.2, 7.1.4, 7.1.9, 7.1.10, 8.1, 8.1.1, 8.1.2, 8.1.3, 8.1.4	<p><i>UTEX has not provided any examples to support its statement that there may be certain subscribers that are not “telecommunications carriers” who are also not “end users.” Consistent with the Commission’s decision in Docket No. 28821 under Resale DPL SBC Issue 8, the Arbitrators conclude that UTEX may resell services purchased under the Resale Attachment only to end users. (Docket No. 28821, Arbitration Award – Track 1 Issues , Resale – JT DPL – Final, DPL SBC Issue 8 at page 3 of 9 (February 22, 2005)). The Arbitrators, therefore, conclude that the terms “User” and “customers” should be replaced with the term “End User” in the sections in the Resale Attachment identified by AT&amp;T.</i></p> <p><i>The issue regarding the definition of “End User” is addressed in detail in the text of the Award in the section titled “End User Definition.”</i></p>	<p><i>UTEX excepts to the finding that ESPs are not end users for purposes of § 251(c)(4) resale. This is plain error.</i></p> <p><i>Specifically ESPs are end users under the act because they are not carriers. The end user vs. carrier is a Boolean issue and the current commission decision requires ESPs to be treated as end users in some respects but as carriers for others. This is unlawful.</i></p>	See AT&T Texas’ Response to UTEX’s Exceptions in AT&T GT&C-65.
AT&T Resale-4	(a) Should the agreement include language from § 251(c)(4)(B) that prohibits unreasonable restrictions on resale by AT&T as well as cross-class selling by UTEX?	<p>AT&amp;T Resale §§ 1.1.4, 2.2.5, 2.2.6, 3.10</p> <p>UTEX §§ 1.1.2</p>	<p><i>a) The Arbitrators find that AT&amp;T Texas’s proposed § 1.1.4 reflects FTA § 251(c)(4)(B) regarding restrictions on resale and prohibition on cross–selling between different categories of subscribers. Furthermore, AT&amp;T Texas’s proposed § 2.2.5 on resale of grandfathered services is consistent with the Commission’s decision on Resale DPL SBC Issue 1 in Docket No. 28821. (Docket No. 28821, Arbitration Award – Track 1 Issues , Resale – JT DPL – Final, DPL SBC Issue 1 at page 1 of 9 (February 22,</i></p>	<p><i>UTEX excepts to this decision since the restriction against reselling an AT&amp;T retail service to ESPs is an unlawful restriction on resale and violates § 251(c)(4).</i></p> <p><i>Specifically ESPs are end users under the act because they are not carriers. The end user vs. carrier is a Boolean issue and the current commission decision requires ESPs to be treated as end users in some respects but as carriers for</i></p>	See AT&T Texas’ Response to UTEX’s Exceptions in AT&T GT&C-65.

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	(b) May UTEX use resold services to provide access or interconnection services to itself or other carriers?		<p>2005)) UTEX has neither provided any justification for its proposed language nor any substantive objection to AT&amp;T’s proposed language. The Arbitrators therefore, adopt AT&amp;T Texas’s proposed language for §§ 1.1.4 and 2.2.5</p> <p>b) Furthermore, AT&amp;T Texas’s proposed §§ 2.2.6 and 3.10 on limiting UTEX’s resale of AT&amp;T Texas’s services to only end users and prohibiting resale of such services by UTEX to itself, its affiliates and/or subsidiaries and other carriers are consistent with the Commission’s decision on Resale Issue 8 in Docket No. 28821. (Docket No. 28821, Arbitration Award – Track 1 Issues , Resale – JT DPL – Final, DPL SBC Issue 8 at page 3 of 9 (February 22, 2005)). UTEX has neither provided any justification for its proposed language nor any substantive objection to AT&amp;T Texas’s proposed language. The Arbitrators therefore, adopt AT&amp;T Texas’s proposed language for §§ 2.2.6 and 3.10.</p>	<p>others. This is unlawful.</p>	
AT&T Resale-18	Should End User Common Line (EUCL) charges apply on each line resold?	AT&T Resale § 7.1.9	<p>The Arbitrators conclude that it is inappropriate to omit the word “End” in the reference to “End User Common Line charges” in proposed section §7.1.9, as UTEX suggests, given that End User Common Line (EUCL) charges are applied to End Users on each local exchange line resold in the agreement. UTEX has not explained its opposition to AT&amp;T Texas’s proposed language. The Arbitrators, therefore, adopt AT&amp;T Texas’s proposed language for § 7.1.9.</p>	<p>UTEX excepts to this decision only to observe that when AT&amp;T sells a service to an ESP like ISDN PRI that the ESP then uses to provide its enhanced/information services AT&amp;T imposes the EUCL on the ESP. This necessarily means that the ESP is an “end user.” Otherwise the ESP would pay carrier’s carrier charges. This once again points out the error in the PFA from classifying ESPs as “not end users” for purposes of UNEs and resale when they use a telecommunications service for anything other than administrative purposes.</p>	<p>See AT&amp;T Texas’ Response to UTEX’s Exceptions in AT&amp;T GT&amp;C-65.</p>

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AT&T UNE-8	<p>a) Should the agreement contain terms and conditions for the methods by which UTEX can access UNEs and perform its own combinations?</p> <p>b) Should UTEX be allowed to have direct access to AT&amp;T’s distribution frames?</p>	<p>UTEX: RMU 2.2, 2.4, 2.4.1, 2.5 EFU 3.2.1, 4.1, 5.1</p> <p>AT&amp;T: 2.15- 3.3.8.2, Appendix Physical Collocation, Appendix Virtual Collocation</p>	<p><i>(a)-(b) The Arbitrators conclude that the ICA should contain terms and conditions for methods by which UTEX can access UNEs and perform its own combinations. However, the Arbitrators find that such methods of access should not compromise the security, reliability, and integrity of AT&amp;T Texas’s network. Therefore, the Arbitrators decline to require AT&amp;T Texas to provide UTEX access to its Main Distribution Frame.</i></p> <p><i>The Arbitrators find that the three methods of access proposed by AT&amp;T Texas in section 3 of AT&amp;T Texas’s Lawful UNE appendix for UTEX to perform its own combinations to be reasonable and therefore adopt AT&amp;T Texas’s proposed language in section 3 of AT&amp;T Texas’s Lawful UNE appendix. The three proposed methods would permit UTEX to perform its own combinations in the following areas: 1) in its physical or virtual collocation space, 2) in the common room space other than the collocation common areas within the central office, and 3) in a closure such as a cabinet provided by AT&amp;T Texas on AT&amp;T Texas’s property if UTEX’s UNE frame is located outside the AT&amp;T Texas central office where the UNEs are to be combined.</i></p> <p><i>In addition, the Arbitrators conclude that UTEX has the option to request AT&amp;T Texas to perform the combination between a UNE and an alternately-supplied element. The Arbitrators note that FCC Rule 51.315(d) requires an ILEC to perform, upon request, the functions necessary to combine UNEs with elements possessed by a requesting telecommunications carrier in a technically feasible manner and an ILEC that denies a combination request must prove to the state commission that</i></p>	<p><i>UTEX excepts to the rejection of UTEX’s position that if AT&amp;T refuses to perform combinations then UTEX can enter and perform the combination for itself. First, this violates § 251(c)(3) which provides in pertinent part that “An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service.” AT&amp;T will not combine and will not let UTEX combine either. Instead, under the Award UTEX will have to seek relief from the PUC, with the requisite delay and expense. If the Arbitrators do not reverse this decision they must at least provide a meaningful and compensatory liquidated remedy for a wrongful refusal to combine.</i></p>	<p>See AT&amp;T Texas’ Response to UTEX’s Exceptions in AT&amp;T GT&amp;C-65.</p>

Issue #	Issue Statement	Attachment & Sections	Arbitrators’ Decision	UTEX’ EXCEPTION	AT&T TEXAS’ RESPONSE TO UTEX’S EXCEPTION
			<p><i>the requested combination is not technically feasible. The Arbitrators interpret “elements possessed by a requesting telecommunications carrier” to include network elements owned or self-supplied by UTEX and network elements obtained by UTEX from a third party carrier. The Arbitrators note that the Commission has approved language in Docket No. 28821 in the CJP-AT&amp;T ICA that addresses this type of combination. Section 2.2 of the CJP-AT&amp;T Texas ICA states:</i></p> <p><i>“SBC TEXAS will permit CLEC to designate any point at which it wishes to connect CLEC’s facilities or facilities provided by a third party on behalf of CLEC with SBC TEXAS’ network for access to unbundled Network Elements for the provision by CLEC of a telecommunications service. If the point designated by CLEC is technically feasible, SBC TEXAS will make the requested connection.”</i></p> <p><i>The Arbitrators find that in the event AT&amp;T denies a combination request from UTEX, AT&amp;T Texas should provide written notice of its denial and the parties may address any disputes using the Commission rules for dispute resolution. The following language should be incorporated in the ICA:</i></p> <p><i>“In the event that AT&amp;T Texas denies a request to perform the functions necessary to combine UNEs with elements possessed by CLEC or provided by a third party on behalf of CLEC, AT&amp;T Texas shall provide written notice to CLEC of such denial and the basis thereof. Any dispute over such denial shall be addressed using the dispute resolution procedures outlined in the Public Utility Commission of Texas</i></p>		

Issue #	Issue Statement	Attachment & Sections	Arbitrators’ Decision	UTEX’ EXCEPTION	AT&T TEXAS’ RESPONSE TO UTEX’S EXCEPTION
			<p><i>Rules. In any dispute resolution proceeding, AT&amp;T Texas shall have the burden to prove that such denial meets one or more applicable standards for denial, including without limitation those under the FCC rules and orders, Verizon Comm. Inc. v. FCC, 535 U.S. 467 (2002), and the Agreement.”</i></p> <p><i>In summary, the Arbitrators generally adopt AT&amp;T Texas’s proposed language in section 3 of the Appendix Lawful UNEs (the term “Lawful UNEs” shall be replaced by “251(c)(3) UNEs,” consistent with the Commission’s decision in Docket No. 28821 as discussed under DPL Issue AT&amp;T UNE-13), the language in section 2.2 of CJP ICA outlined above, and the language delineated above regarding the process of addressing disputes in the event AT&amp;T Texas denies a combination request.</i></p> <p><i>With respect to the connection of a UNE or a combination of UNEs to any one or more facilities or services obtained by UTEX at wholesale from AT&amp;T Texas, the Arbitrators note that these connections are addressed under section 10 of the TRO-TRRO Rider (Commingling, Conversions, and Combinations). Furthermore, the Arbitrators note that the TRO/TRRO Order Rider (allowed by Order 30) has been adopted by the Arbitrators under DPL Issue AT&amp;T UNE-1 above. Therefore, the connection of a UNE or a combination of UNEs to any one or more facilities or services obtained by UTEX at wholesale from AT&amp;T Texas is addressed in the UNE language adopted by the Arbitrators under DPL issue AT&amp;T UNE-1, above.</i></p>		
AT&T UNE-11	Is UTEX entitled to direct access to AT&T’s back office systems, access	UTEX RMU 5.3 AT&T xDSL 5.0	<i>The Arbitrators adopt the language proposed by AT&amp;T Texas. AT&amp;T Texas’s proposed language is very similar to the contract language in Section 5.0 of the xDSL attachment in the CLEC Coalition/AT&amp;T ICA</i>	<i>UTEX excepts to the rejection of UTEX’s position that if AT&amp;T refuses to perform combinations then UTEX can enter and perform the combination for itself. First, this violates § 251(c)(3) which provides</i>	See AT&T Texas’ Response to UTEX’s Exceptions in AT&T GT&C-5.



Issue #	Issue Statement	Attachment & Sections	Arbitrators’ Decision	UTEX’ EXCEPTION	AT&T TEXAS’ RESPONSE TO UTEX’S EXCEPTION
	terminals, central offices and distribution frames in order to perform its own combinations?		<i>relating to Operational Support System: Loop Make-Up Information and Ordering. The language in the CLEC Coalition-AT&amp;T Texas ICA was approved by the Commission in Docket No. 28821. Adoption of AT&amp;T Texas’s language would ensure that UTEX has the same access to operational support systems for xDSL loops as is available to other CLECs.</i>	<i>in pertinent part that “An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service.” AT&amp;T will not combine and will not let UTEX combine either. Instead, under the Award UTEX will have to seek relief from the PUC, with the requisite delay and expense. If the Arbitrators do not reverse this decision they must at least provide a meaningful and compensatory liquidated remedy for a wrongful refusal to combine.</i>	
AT&T UNE-16	<p>a) Are the Performance Measures (“PMs”) developed in collaborative sessions with the Texas CLEC community appropriate for inclusion in parties’ Agreement?</p> <p>b) Should the PUC order liquidated damages beyond the Remedy Plan that is associated with the PMs found in the Agreement and that AT&amp;T is willing to make available to UTEX?</p>	UTEX RMU (2.14 – 2.18),  AT&T PM Appendices	<i>This issue is addressed in the text of the Award in the section titled “Performance Measures and Liquidated Damages.”</i>	<p>UTEX has excepted to the section titled <i>Performance Measures and Liquidated Damages.</i></p> <p>Please see UTEX <b>Exceptions to the PFA Section 7.1.</b></p>	See AT&T Texas’ Response Brief pp. 23-28.

Issue #	Issue Statement	Attachment & Sections	Arbitrators’ Decision	UTEX’ EXCEPTION	AT&T TEXAS’ RESPONSE TO UTEX’S EXCEPTION
AT&T UNE-18	Should UTEX be required to use the same ordering forms and follow the same guidelines that the CLEC community utilizes in placing orders/requesting services from AT&T?	UTEX (EFU 3.0-3.3.2)  AT&T OSS Appendix	<i>This DPL issue is addressed in the text of the Award in the section titled “OSS and Ordering.”</i>	<i>UTEX has excepted to the section titled OSS and Ordering.”</i>  <i>In particular UTEX excepts to any finding that AT&amp;T’s current OSS currently incorporates the decisions of this Award.</i>  <i>UTEX has proposed Attachment C as its OSS compliance Language as ordered by the Arbitrators.</i>	See AT&T Texas’ Exception Brief pp. 33-34.  See AT&T Texas’ Response Brief pp. 17-20.
AT&T UNE-23	Is UTEX entitled to entrance facilities on an unbundled basis under current law?	UTEX RMU (7.6.2)	<i>The Arbitrators conclude that pursuant to FCC Rule, 47 C.F.R. §51.319(e)(2), AT&amp;T Texas is not obligated to provide UTEX with unbundled access to entrance facilities. The Arbitrators, therefore, decline to adopt UTEX’s proposed language requiring AT&amp;T Texas to provide access to entrance facilities on an unbundled basis. Furthermore, the Commission concluded in Docket No. 28821 that entrance facilities are not available at TELRIC rates for purposes of interconnection. (Docket No. 28821, Arbitration Award –Track 1 Issues at 15-16. (February 22, 2005)).</i>  <i>However, consistent with the Commission’s conclusion in Docket No. 28821 that the cross-connects associated with entrance facilities used for interconnection should be provided at TELRIC rates, AT&amp;T Texas shall provide cross-connects associated with entrance facilities at TELRIC rates. (Docket No. 28821, Order on Clarification and Reconsideration at 3-4. (May 11, 2005)). The Arbitrators address ICA language regarding cross-connects for interconnection facilities under AT&amp;T NIM 1-5.</i>	The that an Entrance Facility used exclusively for Interconnection is not available except as special access and at non-TELRIC pricing is legal error. UTEX is not seeking access to an Entrance Facility as a UNE under § 251(c)(3); that UNE has been declassified. The issue is whether a an Entrance Facility that will be used exclusively for Interconnection under § 251(c)(2) is to be priced under the cost-based standard stated in § 252(2)(d)(1) and FCC Rules 51.501 and 51.503. The FCC expressly held in ¶ 365 of the TRO (Report and Order and Order on Remand and Further Notice of Proposed Rulemaking; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, 18 FCC Rcd 16978 (“Triennial Review Order” or “TRO”), vacated in part and remanded, USTA v. FCC, 359 F.3d 554 (D.C. Cir. 2004) (“USTA II”).)and in ¶ 140 of the TRRO (Order on Remand, In the Matter of Unbundled Access to Network Elements Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, WC Docket No. 04-313; CC Docket No. 01338, FCC 04-290, 20 FCC Rcd 2533 (2005) (“Triennial Review Remand Order” or “TRRO”))	The Arbitrators have followed appropriate federal law and Commission precedent.

Issue #	Issue Statement	Attachment & Sections	Arbitrators’ Decision	UTEX’ EXCEPTION	AT&T TEXAS’ RESPONSE TO UTEX’S EXCEPTION
				<p>that its delisting of Entrance Facilities as a UNE <b>did not affect</b> or eliminate the long-standing availability of the same facility for interconnection and at TELRIC. [“We note in addition that our finding of non-impairment with respect to entrance facilities does not alter the right of competitive LECs to obtain interconnection facilities pursuant to section 251(c)(2) for the transmission and routing of telephone exchange service and exchange access service. Thus, competitive LECs will have access to these facilities at cost-based rates to the extent that they require them to interconnect with the incumbent LEC’s network.”] The Ninth Circuit very recently held that Entrance Facilities must be made available at TELRIC, citing with approval similar decisions by the Seventh and Eighth Circuit. (<i>Pac. Bell Tel. Co. v. Cal. PUC</i>, 597 F.3d 958, 965 (9th Cir. Cal. 2010): “AT&amp;T contends the district court erred by affirming the CPUC’s arbitral order permitting competitive LECs to lease entrance facilities from incumbent LECs under 47 U.S.C. § 251(c)(2), the interconnection provision. Both the Seventh and the Eighth circuits recently rejected AT&amp;T’s position, and have concluded that FCC regulations authorize state public utilities commissions to order incumbent LECs to lease entrance facilities to competitive LECs at regulated rates for the purpose of interconnection. See <i>Sw. Bell Tel., LP v. Mo. Pub. Serv. Comm’n</i>, 530 F.3d 676 (8th Cir. 2008) (“<i>SWBT</i>”); <i>Ill. Bell Tel. Co. v. Box</i>, 526 F.3d 1069 (7th Cir. 2008) (“<i>Box I</i>”). n11 We agree with our sister circuits.”)</p> <p>Each of these appeals courts pointed directly to</p>	

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				<p>the FCC’s express clarification that although Entrance Facilities are no longer available as UNEs they must still be made available at TELRIC prices when used exclusively for Interconnection under § 252(c)(2).</p> <p>UTEX is aware that the Commission has previously ruled that “entrance facilities” used exclusively for interconnection are not available at TELRIC pricing. But the PFA’s adoption of this proposition for purposes of this arbitration is error for it plainly conflicts with the FCC’s express statement and the recent interpretation of the Seventh, Eighth and Ninth Circuits, so UTEX is excepting to the holding. UTEX’s language in § 4.1.1 in Attachment 1 to NIM that provided for an Entrance Facility at TELRIC rates must be used.</p>	
AT&T UNE-25	<p>a) Should AT&amp;T’s established and nondiscriminatory BFR process be applied as part of this agreement?</p> <p>b) Should the BFR process require exhaustion of the dispute resolution process before either Party goes to the PUC?</p>	UTEX (BEU 6.0-6.9) AT&T (6-6.2)	<i>This issue is addressed s in the text of the Award in the section titled “OSS and Ordering.”</i>	<p><i>UTEX has excepted to the section titled “OSS and Ordering.”</i></p> <p><i>In particular UTEX excepts to any finding that AT&amp;T’s current OSS currently incorporates the decisions of this Award.</i></p> <p><i>UTEX has proposed Attachment C as its OSS compliance Language as ordered by the Arbitrators.</i></p>	<p>The Arbitrators correctly concluded that the BFR process is the method in place for CLECs for the parties to establish interim procedures, including manual ordering; they also conclude that the timing of 120 days is sufficient to determine and develop the requested product.</p> <p>In awarding the AT&amp;T OSS and ordering language, they also recognized that AT&amp;T’s terms describe OSS access procedures that were developed through collaborative industry processes to serve hundreds of participating CLECs, not just UTEX. And, that they provide nondiscriminatory access to AT&amp;T Texas’ OSS functions</p> <p>UTEX proposes language and terms which are only self-serving to UTEX, clearly a discriminatory practice if the PUC actually accepts UTEX’s proposal.</p>

Issue #	Issue Statement	Attachment & Sections	Arbitrators’ Decision	UTEX’ EXCEPTION	AT&T TEXAS’ RESPONSE TO UTEX’S EXCEPTION
					See AT&T Texas’ Exception Brief pp. 33-34.  See AT&T Texas’ Response Brief pp. 17-20.
AT&T E911-1	Should terms and conditions for emergency services (E911) continue to be included in a separate attachment or added at the end of the Public Safety, Network Security and Law Enforcement attachment?	AT&T Entire Attachment E911 (Note: AT&T has reflected specific 911 disputes below with section references based on Attachment E911)  UTEX Public Safety §§ 4 – 11	<i>This issue is addressed in the text of the Award in the section titled “E911 Service.”</i>	<i>UTEX has excepted to some portions of the section titled “E911 Service.”</i>  <u>UTEX notes an inconsistency Per AT&amp;T NIM – 2-16 the Arbitrators agree with UTEX that a CLEC’s obligation to provide 911 functionality is required, only to the extent it is providing a service for which 911 connectivity is required, however all other 911 sections either expressly require or implicitly require 911 to be established prior to any other working interconnection.</u>  <u>UTEX requests that all language conform to NIM 2-16.</u>	AT&T disagrees that there are any inconsistencies with the Arbitrators rulings and disagrees that there is any need to change the 911 contract language. In addition, Commission rules will govern the dealings between the parties regarding E-911 services.
AT&T E911-2	What are the appropriate definitions for E911 Universal Emergency Number Service; Automatic Number Identification (ANI); and Automatic Location Identification (ALI)? Should the term Emergency Services Number (ESN) be included and if so, what is the proper definition?	E911 § 1.1, 1.5, 1.6, 1.12 UTEX Attachment Public Safety §§ 4-11	<i>This issue is addressed in the text of the Award in the section titled “E911 Service.”</i>	<i>UTEX has excepted to some portions of the section titled “E911 Service.”</i> <u>UTEX notes an inconsistency Per AT&amp;T NIM – 2-16 the Arbitrators agree with UTEX that a CLEC’s obligation to provide 911 functionality is required, only to the extent it is providing a service for which 911 connectivity is required, however all other 911 sections either expressly require or implicitly require 911 to be established prior to any other working interconnection.</u>  <u>UTEX requests that all language conform to NIM 2-16.</u>	AT&T Texas’ language is consistent with NENA definitions and consistent with the Arbitrators award. UTEX’s exceptions are not on point with the issue of E911 definitions.  See AT&T Texas’ Response to UTEX’s Exceptions in AT&T E-911-1

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AT&T E911-4	What is the proper terminology for the individual placing a 911 call?	E911 §§ 1.9, 1.10 UTEX Attachment Public Safety §§ 4-11	<i>The Arbitrators agree with AT&amp;T Texas that clarity is needed to ensure proper references. The Arbitrators do not find UTEX’s comments alleging that AT&amp;T Texas is attempting to perpetuate its legacy technologies or to crush new technologies to be germane to this DPL issue, and note that neither the FTA nor any subsequent FCC orders or rulings place any responsibility upon ILECs to update their networks to accommodate the alternative addresses to which UTEX refers. The Arbitrators find it reasonable to adopt the term “End User” as the term is defined in the text of the Award in the section titled “End User Definition.”</i>	<i>UTEX has excepted to some portions of the section titled “E911 Service.” <u>UTEX notes an inconsistency Per AT&amp;T NIM – 2-16 the Arbitrators agree with UTEX that a CLEC’s obligation to provide 911 functionality is required, only to the extent it is providing a service for which 911 connectivity is required, however all other 911 sections either expressly require or implicitly require 911 to be established prior to any other working interconnection.</u>  <u>UTEX requests that all language conform to NIM 2-16.</u></i>	See AT&T Texas’ Response to UTEX’s Exceptions in E911-1.
AT&T E911-5	Is it appropriate to limit AT&T’s obligations to provide 911-related services to UTEX to those circumstances where UTEX is certified as a CLEC and AT&T is the 911 service provider?	E911 §§ 2.1, 2.4, 2.6 UTEX Attachment Public Safety §§ 4-11	<i>This issue is addressed in the text of the Award in the section titled “E911 Service.”</i>	<i>UTEX has excepted to some portions of the section titled “E911 Service.” <u>UTEX notes an inconsistency Per AT&amp;T NIM – 2-16 the Arbitrators agree with UTEX that a CLEC’s obligation to provide 911 functionality is required, only to the extent it is providing a service for which 911 connectivity is required, however all other 911 sections either expressly require or implicitly require 911 to be established prior to any other working interconnection.</u>  <u>UTEX requests that all language conform to NIM 2-16.</u></i>	See AT&T Texas’ Response to UTEX’s Exceptions in E911-1.
AT&T E911-7	What are the appropriate trunking requirements between the Selective Router (SR) and the E911 customer (PSAP)?	E911 § 2.2 UTEX Attachment Public Safety §§ 4-11	<i>This issue is addressed in the text of the Award in the section titled “E911 Service.”</i>	<i>UTEX has excepted to some portions of the section titled “E911 Service.” <u>UTEX notes an inconsistency Per AT&amp;T NIM – 2-16 the Arbitrators agree with UTEX that a CLEC’s obligation to provide 911 functionality is required, only to the extent it is providing a service for which 911 connectivity is required, however all other 911 sections either expressly require or implicitly require 911 to be established prior to any other working interconnection.</u></i>	See AT&T Texas’ Response to UTEX’s Exceptions in E911-1.

Issue #	Issue Statement	Attachment & Sections	Arbitrators’ Decision	UTEX’ EXCEPTION	AT&T TEXAS’ RESPONSE TO UTEX’S EXCEPTION
				<u>UTEX requests that all language conform to NIM 2-16.</u>	
AT&T E911-8	Should AT&T’s language regarding provision of facilities UTEX may utilize for 911 interconnection be included?	E911 § 2.2a UTEX Attachment Public Safety §§ 4-11	<i>This issue is addressed in the text of the Award in the section titled “E911 Service.”</i>	<i>UTEX has excepted to some portions of the section titled “E911 Service.”</i> <u>UTEX notes an inconsistency Per AT&amp;T NIM – 2-16 the Arbitrators agree with UTEX that a CLEC’s obligation to provide 911 functionality is required, only to the extent it is providing a service for which 911 connectivity is required, however all other 911 sections either expressly require or implicitly require 911 to be established prior to any other working interconnection.</u>  <u>UTEX requests that all language conform to NIM 2-16</u>	See AT&T Texas’ Response to UTEX’s Exceptions in E911-1.
AT&T E911-10	Should the agreement contain the appropriate trunking requirements for E911 service between UTEX and AT&T’s SR?	E911 §§ 1.4, 2.5a, 2.5b, 2.5c, 2.5d, 2.5e, 2.5f, 2.5g, 2.5i, 2.6a, 2.6b, , 4.2, 9.0, 9.1 UTEX Attachment Public Safety §§ 4-11	<i>This issue is addressed in the text of the Award in the section titled “E911 Service.”</i>	<i>UTEX has excepted to some portions of the section titled “E911 Service.”</i> <u>UTEX notes an inconsistency Per AT&amp;T NIM – 2-16 the Arbitrators agree with UTEX that a CLEC’s obligation to provide 911 functionality is required, only to the extent it is providing a service for which 911 connectivity is required, however all other 911 sections either expressly require or implicitly require 911 to be established prior to any other working interconnection.</u>  <u>UTEX request all language conform to NIM 2-16.</u>	See AT&T Texas’ Response to UTEX’s Exceptions in E911-1.
AT&T E911-17	Should the 911 attachment address non-SS7 interconnection?	E911 §§ 8.0, 8.1 UTEX Attachment Public Safety §§ 4-11	<i>This issue is addressed in the text of the Award in the section titled “E911 Service.”</i>	<i>UTEX has excepted to some portions of the section titled “E911 Service.”</i> <u>UTEX notes an inconsistency Per AT&amp;T NIM – 2-16 the Arbitrators agree with UTEX that a CLEC’s obligation to provide 911 functionality is required, only to the extent it is providing a service for which 911 connectivity is required, however all other 911 sections either expressly require or implicitly</u>	AT&T Texas language allows 911 trunks to be ordered consistent with what is currently available in AT&T’s network.  See AT&T Texas’ Response to UTEX’s Exceptions in E911-1.

Issue #	Issue Statement	Attachment & Sections	Arbitrators’ Decision	UTEX’ EXCEPTION	AT&T TEXAS’ RESPONSE TO UTEX’S EXCEPTION
				<i>require 911 to be established prior to any other working interconnection.</i>  <i>UTEX requests that all language conform to NIM 2-16.</i>	
AT&T NUM-1	Is it appropriate for the agreement to reflect the parties’ numbering obligations with specificity, providing for stable, predictable and reliable routing of calls between the parties’ networks?	AT&T Entire Appendix Numbering  UTEX § 1.1; UTEX Attachment NIM and its Appendices and Attachments and Exhibits	<i>The Arbitrators conclude that AT&amp;T Texas’s proposed language is reasonable and provides appropriate specificity. The Arbitrators adopt AT&amp;T Texas’s proposed language with the exception that, as UTEX points out, there are some cases in which it is not possible to know the geographic location where a call originates or terminates. Accordingly, the Arbitrators adopt AT&amp;T Texas’s language, modified as follows:</i>  <i>2.2 To the extent it is technically feasible, pursuant to Alliance for Telecommunications Industry Solutions (ATIS) Guidelines for the Section 7.3 of the North American Numbering Council Local Number Portability Architecture and Administration of Telephone Numbers, revised August 15, 2003 (INC 01-0515-028), the Parties agree that CO Codes/blocks allocated to a wireline Service Provider are to be utilized to provide service to a customer’s premise located in the same rate center that the CO Codes/blocks are assigned. Exceptions exist, for example tariffed services such as foreign exchange service.</i>	<i>UTEX has excepted to some of the holdings regarding numbers, CPN and geographic relevance. UTEX does not, however, except to the language changes ordered by the Arbitrators on this issue.</i>	UTEX has raised no exception to this issue.



Issue #	Issue Statement	Attachment & Sections	Arbitrators’ Decision	UTEX’ EXCEPTION	AT&T TEXAS’ RESPONSE TO UTEX’S EXCEPTION
AT&T OSS-1	Should the agreement contain a discrete OSS appendix to set forth terms and conditions for UTEX to obtain nondiscriminatory access to AT&T’s Operations Support System (OSS) functions?	AT&T Appendix OSS  UTEX GTC §§ 18.2, Attachment Liquidated Damages, Attachment NIM ; Appendix 2 to NIM Appendix UNE § 3.2, 18, 23; Appendix xDSL § 5; Attachment Resale § 10.0	<i>This issue is addressed in the text of the Award in the section titled “OSS and Ordering.”</i>	<i>UTEX has excepted to some of the decisions in the section titled “OSS and Ordering.”</i>  <i>In particular UTEX excepts to any finding that AT&amp;T’s current OSS currently incorporates the decisions of this Award.</i>  <i>UTEX has proposed Attachment C as its OSS compliance Language as ordered by the Arbitrators.</i>	See AT&T Texas’ Exception Brief pp. 33-34.  See AT&T Texas’ Response Brief pp. 17-20.
AT&T OSS-2	Are the terms and conditions in AT&T’s OSS appendix appropriate for providing an industry-uniform process for UTEX to access AT&T’s OSS functions, while protecting the interests of all users of AT&T’s OSS?	AT&T Appendix OSS  UTEX GTC §§ 18.2, 51.47, 51.48, 51.49, 51.51, 51.54, 51.55, 51.56, 51.90, 51.110, 51.111, 51.133; Appendix UNE § 3.2, 18, 23; Appendix xDSL § 5; Attachment Resale § 10.0; Attachment Liquidated Damages, Attachment NIM ; Appendix 2 to NIM	<i>This issue is addressed in the text of the Award in the section titled “OSS and Ordering.”</i>	<i>UTEX has excepted to some of the decisions in the section titled “OSS and Ordering.”</i>  <i>In particular UTEX excepts to any finding that AT&amp;T’s current OSS currently incorporates the decisions of this Award.</i>  <i>UTEX has proposed Attachment C as its OSS compliance Language as ordered by the Arbitrators.</i>	See AT&T Texas’ Exception Brief pp. 33-34.  See AT&T Texas’ Response Brief pp. 17-20.
AT&T NIM – 1  UTEX Respon sive Issues	AT&T: a) Should the different types of traffic exchanged between the Parties be referenced in this agreement?	Network Interconnection Methods (NIM) Section 1.1 1.1a 1.2	<i>(a) The Arbitrators conclude that the different types of traffic exchanged between the Parties should be referred to in the ICA because traffic type is the basis for determination of intercarrier compensation. The Arbitrators adopt AT&amp;T Texas’s proposed language in § 1.1 because it is consistent with FTA § 251(c). The Arbitrators adopt AT&amp;T Texas’s proposed language in</i>	<i>(a) The PFA expressly instructs that “all references to § 251(b)(5) traffic should be replaced with ‘local traffic’ for reasons delineated in DPL Issue AT&amp;T NIM 6-1.” See PFD pages 52, 58 and 65 and NIM 6-1 (p. 187 and 189), NIM 6-4 (p. 200, 201 and 202 [but see p. 203, which refers to 251(b)(5) rather than local], NIM 6-6 (pp. 212-213), NIM 6 10</i>	AT&T has filed its own exceptions to the Arbitrators’ modifications to Section 1.1a. See AT&T Texas’ Exceptions Brief at pp. 7-23.  UTEX cannot add new contract language at this stage in the proceeding. See AT&T Texas’ Response Brief at pp. 3-5.

Issue #	Issue Statement	Attachment & Sections	Arbitrators’ Decision	UTEX’ EXCEPTION	AT&T TEXAS’ RESPONSE TO UTEX’S EXCEPTION
(b , c and d)	<p>UTEX: b) Must all technically feasible traffic be identified into discrete categories that accurately reflect current law?</p> <p>UTEX: c) Are all categories of traffic clearly defined in terms of either reciprocal compensation and/or jointly provided access to a knowing third party IXC?</p> <p>UTEX: d) Can AT&amp;T create a new category of traffic or use existing categories that can result in a requirement that UTEX purchase a type of access or signaling or both in order to pass traffic as a competitor for types of traffic that did not exist at the time of the Act?</p> <p>UTEX: e) Can the</p>	<p>1.3</p> <p>UTEX Attachment NIM and all Appendices and Exhibits, including the Call Flow Diagrams</p>	<p>§ 1.1a, but modify the language to include other types of traffic exchanged between the parties and addressed in Attachment 6 to NIM: Intercarrier Compensation. These other types of traffic include ESP traffic, Meet Point Billing Traffic, FGA Traffic, InterLATA Interexchange Traffic, and Cellular Traffic.</p> <p>“1.1a Interconnection is the physical joining of two networks for the mutual exchange of <u>ESP traffic, 251(b)(5)/IntraLATA Toll Traffic, Meet Point Billing Traffic, FGA Traffic, InterLATA Interexchange Traffic, and Cellular Traffic.</u>”</p> <p>The Arbitrators conclude that interconnection is the physical joining of networks for the mutual exchange of specific categories of traffic. UTEX’s proposed language in § 1.1a would require interconnection for the mutual exchange of Interconnection traffic that is, in turn, defined in § 1.2 as exchange of “information.” The Arbitrators find that the references to “Interconnection Traffic” and “Information” to be vague and not adequately explained by UTEX. Furthermore, UTEX’s proposed language for § 1.3 on what is involved in joining networks for the exchange of traffic is vague and unnecessary and not adequately explained by UTEX. The Arbitrators therefore decline to adopt UTEX’s proposed language in §§ 1.1a, 1.2 and 1.3.</p> <p>(b)-(d) The Arbitrators find the term “technically feasible” traffic to be ambiguous. The Arbitrators conclude that the terms of the ICA should include the different categories of traffic exchanged between the parties and the appropriate compensation method applicable to each type of traffic. The language</p>	<p>(p. 218), NIM 6-14 (p. 228)). PFD Attachment B, however, also approves language that still refers to “251(b)(5) traffic”, and on occasion even uses “251(b)(5)” rather than local in discussion of an issue. See, e.g., Attachment B NIM 2-4, p. 172; NIM 6-6, p. 211; AT&amp;T ITR 1, p. 233. As a consequence there is a conflict within the prescribed language, and in particular certain prescribed language still uses “251(b)(5).” UTEX has identified these prescribed terms that still contain “251(b)(5) rather than “local”: NIM Attachment 1 (Physical Methods of Interconnection) §§ 1; NIM Attachment 2 (Interconnection Procedures) §§ 1.1c, 1.2, 2.0; Appendix ITR §§1.2, 2.6, 2.14, 3.5, 5.4.1; NIM Appendix 6 (Compensation), the language from CJP Compensation terms prescribed on page 203 (NIM 6-4). There may well be other such references as well. This inconsistency and conflict between the Award and with and within Attachment A and in prescribed language must be removed.</p> <p>The decision on this issue incorrectly still references “251(b)(5).”</p> <p>UTEX has drafted contract language consistent with the PFA as Exhibit A NIM Rider and proposes inclusion of this language to implement the Award as discussed in the PFA.</p> <p>UTEX has also incorporated all NIM and NIM related decisions into Exhibit D to highlight the inconsistencies among and between the specific decisions, especially when compared to the PFA award itself. For example while this section allows</p>	<p>UTEX has provided no reason why the Arbitrators erred in opting for AT&amp;T’s language in NIM sections 1.1 – 1.3.</p> <p>UTEX’s Exhibit D is premature. The parties have not reached the stage for preparing conforming contract language. See also Response Brief at pp. 35 (responding to UTEX’s Exhibit D).</p>

Issue #	Issue Statement	Attachment & Sections	Arbitrators’ Decision	UTEX’ EXCEPTION	AT&T TEXAS’ RESPONSE TO UTEX’S EXCEPTION
	PUC award language that is or could be implemented to obtain results that would violate §§ 157, 202, 202, 203, 230, 251 and/or 252 or the FCC’s rules and decisions relating to non-carrier customer traffic and intercarrier compensation?		<p><i>approved by the Arbitrators for Attachment 6 to NIM: Intercarrier Compensation addresses the intercarrier compensation for different categories of traffic. The issues related to signaling are addressed elsewhere in the award.</i></p> <p><i>(e) The Arbitrators find that this issue does not ask for resolution of specific disputed ICA language. The Arbitrators conclude that the language adopted for this ICA is consistent with the relevant sections of the Federal Telecommunications Act and the FCC rules and decisions relating to intercarrier compensation.</i></p>	<p><i>for all traffic, ITR and NIM 2 do not.</i></p> <p><i>UTEX proposes inclusion of the following language on all NIM and ITR and Numbering Appendices to ensure that the threshold decisions in the PFA are followed through contract implementation:</i></p> <p>“The terms of this Attachment are inferior to the terms of the Network Interconnection Methods Rider. In the event there is a conflict between any terms in this Attachment and any other Attachment or Appendix, or to any provision of the Network Interconnection Methods Rider, the Network Interconnection Rider will control. This Attachment and the Network Interconnection Methods Rider were not the result of negotiation under § 252(a) but were instead the result of an arbitration under § 252(b). Therefore, any interpretation must be fully consistent with the standards in the Act and FCC rules.”</p> <p>Finally UTEX excepts that Issue (e) by UTEX does not propose resolution. Quite simply, UTEX requires all terms to be lawful and non-discriminatory and does not want to be deemed to have voluntarily waived its rights to have its interconnection agreement be interpreted under Federal Law (which is what happened in 33323). Inclusion of the above language solves this problem</p>	
AT&T NIM – 2  UTEX Respon	AT&T: a) Are physical technologies used for internal communications	NIM Sections: 1.4-1.4.5  UTEX Attachment NIM and all	<p><i>a) This issue is addressed in the text of the Award in the section titled “Technically Feasible Forms of Interconnection.”</i></p>	<p><i>UTEX has excepted to portions of the Award related to “Technically Feasible Forms of Interconnection.” UTEX has also excepted to UTEX 31.</i></p>	UTEX has provided no reason for its exceptions and no basis for any change in the Arbitrators’ decision on this issue.

Issue #	Issue Statement	Attachment & Sections	Arbitrators’ Decision	UTEX’ EXCEPTION	AT&T TEXAS’ RESPONSE TO UTEX’S EXCEPTION
sive issue	<p>appropriate methods of interconnection?</p> <p>UTEX: b) What are the technical obligations of signaling, routing, trunking and rating for interconnection and how will calls be signaled, routed, rated and billed?</p>	Appendices and Exhibits, including the Call Flow Diagrams	<p>b) This issue is addressed under DPL issue UTEX 31.</p>		
AT&T NIM – 3  UTEX Responsive issue	<p>AT&amp;T a): Are ISDN, ATM, SS7 and SIP valid methods of Section 251(c)(2) interconnection?</p> <p>UTEX: b) Is signaling part of the duties imposed on LECs under 251(b)(5) and/or § 251(c)(2) and if not how does the Act intend to fairly allow for a competitive provider to interconnect its network to the PSTN for the mutual exchange of traffic?</p>	<p>NIM Sections: 1.5, 1.6</p> <p>UTEX Attachment NIM and all Appendices and Exhibits, including the Call Flow Diagrams</p>	<p>(a) These issues and associated ICA language are addressed in the text of the Award in the section titled “Technically Feasible Forms of Interconnection.”</p> <p>(b)-(c) These issues and associated ICA language are addressed in the text of the Award in the section titled “Signaling.”</p> <p>(d) The Arbitrators find that this issue does not ask for resolution of specific disputed ICA language.</p>	<p>UTEX has excepted to portions of the Award related to “Technically Feasible Forms of Interconnection.” UTEX has also portions of the Award related to “Signaling”.</p> <p>UTEX has drafted contract language consistent with the PFA as Exhibit A NIM Rider and proposes inclusion of this language to implement the Award as discussed in the PFA.</p> <p>UTEX has also incorporated all NIM and NIM related decisions into Exhibit D to highlight the inconsistencies among and between the specific decisions, especially when compared to the PFA award itself. For example while this section allows for all SS-7 Interconnection, ITR and NIM 2 do not.</p> <p>UTEX proposes inclusion of the following language on all NIM and ITR and Numbering Appendices to ensure that the threshold decisions in the PFA are followed through contract implementation:</p>	<p>UTEX has provided no reason for its exceptions and no basis for any change in the Arbitrators’ decision on this issue.</p> <p>Instead, UTEX proposes new contract language. UTEX cannot add the contract language it proposes in the Attachment A NIM Rider, which was not included in the contract language that Order No. 30 authorized to be arbitrated. For the same reason, UTEX cannot add the proposed insert that would make all other provisions of the agreement “inferior” to UTEX’s proposed Attachment A NIM Rider. See Response Brief at pp. 3-5 (addressing why new contract language is improper).</p> <p>UTEX’s Exhibit D is premature. The parties have not reached the stage for preparing conforming contract language. See also Response Brief at pp. 35 (responding to UTEX’s Exhibit D).</p>

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	<p>UTEX: c) Can AT&amp;T require UTEX to directly or indirectly purchase signaling services at non-cost based rates in order to compete against AT&amp;T?</p> <p>UTEX: d) Can the PUC award language that is or could be implemented to obtain results that would violate §§ 157, 202, 202, 203, 230, 251 and/or 252 or the FCC’s rules and decisions relating to non-carrier customer traffic and intercarrier compensation?</p>		<i>The Arbitrators conclude that the language adopted for this ICA is consistent with the relevant sections of the Federal Telecommunications Act and the FCC rules and decisions relating to intercarrier compensation.</i>	<p>“The terms of this Attachment are inferior to the terms of the Network Interconnection Methods Rider. In the event there is a conflict between any terms in this Attachment and any other Attachment or Appendix, or to any provision of the Network Interconnection Methods Rider, the Network Interconnection Rider will control. This Attachment and the Network Interconnection Methods Rider were not the result of negotiation under § 252(a) but were instead the result of an arbitration under § 252(b). Therefore, any interpretation must be fully consistent with the standards in the Act and FCC rules.”</p>	
AT&T NIM – 5  UTEX Counter Issue	<p>AT&amp;T : a) Should UTEX be allowed to require AT&amp;T to continue to route its traffic in blocking situations?</p> <p>UTEX: b) Can AT&amp;T block UTEX’s 500 numbers?</p>	<p>NIM Section: 1.8</p> <p>UTEX Attachment NIM and all Appendices and Exhibits, including the Call Flow Diagrams</p>	<p><i>(a)-(b) This issue is addressed in the text of the Award in the section titled “500 Service.”</i></p>	<p><i>UTEX has excepted to portions of the Award related to “500 Service.”</i></p> <p><i>UTEX has drafted contract language consistent with the PFA as Exhibit A NIM Rider and proposes inclusion of this language to implement the Award as discussed in the PFA.</i></p> <p><i>UTEX has also incorporated all NIM and NIM related decisions into Exhibit D to highlight the inconsistencies among and between the specific</i></p>	<p>UTEX has provided no reason for its exceptions and no basis for any change in the Arbitrators’ decision on this issue.</p> <p>UTEX cannot add the contract language it proposes in the Attachment A NIM Rider, which was not included in the contract language that Order No. 30 authorized to be arbitrated. For the same reason, UTEX cannot add the proposed insert that would make all other provisions of the agreement “inferior” to UTEX’s proposed</p>

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				<p><i>decisions, especially when compared to the PFA award itself. For example while this section requires routing of 500 numbers, the Numbering section as well as ITR and NIM could be read to prohibit this.</i></p> <p><i>UTEX proposes inclusion of the following language on all NIM and ITR and Numbering Appendices to ensure that the threshold decisions in the PFA are followed through contract implementation:</i></p> <p>“The terms of this Attachment are inferior to the terms of the Network Interconnection Methods Rider. In the event there is a conflict between any terms in this Attachment and any other Attachment or Appendix, or to any provision of the Network Interconnection Methods Rider, the Network Interconnection Rider will control. This Attachment and the Network Interconnection Methods Rider were not the result of negotiation under § 252(a) but were instead the result of an arbitration under § 252(b). Therefore, any interpretation must be fully consistent with the standards in the Act and FCC rules.”</p>	<p>Attachment A NIM Rider. See Response Brief at pp. 3-5 (addressing why new contract language is improper).</p> <p>UTEX’s Exhibit D is premature. The parties have not reached the stage for preparing conforming contract language. See also Response Brief at pp. 35 (responding to UTEX’s Exhibit D).</p> <p>See AT&amp;T Texas’ Exceptions Brief pp. 23-27 and Response Brief pp. 27-30 for 500 Number discussion.</p>
AT&T NIM - 6	<p>AT&amp;T: a. Should UTEX be allowed to combine originating 251(b)(5) Traffic, intraLATA toll traffic, and interLATA toll traffic on the same trunk group?</p> <p>b. UTEX: Can UTEX require certainty with</p>	NIM Section: 1.9 UTEX Attachment NIM and all Appendices and Exhibits, including the Call Flow Diagrams	<p><i>(a) The Arbitrators concur with AT&amp;T Texas that these types of traffic should not be carried on the same trunk group because it would complicate or make impossible appropriate intercarrier compensation, and therefore adopt AT&amp;T Texas’s proposed language.</i></p> <p><i>(b) The trunking requirements for ESP Traffic is addressed in the text of the Award in the section titled “Inter-carrier Compensation for Traffic Involving UTEX’s ESP Customers” and the trunking</i></p>	<p><i>While UTEX does not oppose separate trunking for AT&amp;T’s favorite categories, UTEX is concerned that language adopted in other parts of Attachment A operate to prevent the separate trunking for jointly provided access, transit and ESP traffic, notwithstanding that it was ordered in the PFD.</i></p> <p><i>UTEX has drafted contract language consistent with the PFA as Exhibit A NIM Rider and proposes inclusion of this language to implement the Award as discussed in the PFA.</i></p>	<p>UTEX has provided no reason for its exceptions and no basis for any change in the Arbitrators’ decision on this issue.</p> <p>UTEX cannot add the contract language it proposes in the Attachment A NIM Rider, which was not included in the contract language that Order No. 30 authorized to be arbitrated. For the same reason, UTEX cannot add the proposed insert that would make all other provisions of the agreement “inferior” to UTEX’s proposed Attachment A NIM Rider. See Response Brief at pp. 3-5 (addressing why new contract language is</p>

Issue #	Issue Statement	Attachment & Sections	Arbitrators’ Decision	UTEX’ EXCEPTION	AT&T TEXAS’ RESPONSE TO UTEX’S EXCEPTION
	respect to the intent of the arbitrated language by requiring an agreement that the trunk groups reflect the arbitrated result with respect to new technology traffic and with respect to transit?		<i>requirements for transit traffic is addressed under DPL issue AT&amp;T ITR-1.</i>	<p><i>UTEX has also incorporated all NIM and NIM related decisions into Exhibit D to highlight the inconsistencies among and between the specific decisions, especially when compared to the PFA award itself. For example while this section requires routing of LPA, the ITR and NIM 1 and NIM 2 section could be read to prohibit fiber meets with MPB JPA trunks.</i></p> <p><i>UTEX proposes inclusion of the following language on all NIM and ITR and Numbering Appendices to ensure that the threshold decisions in the PFA are followed through contract implementation:</i></p> <p>“The terms of this Attachment are inferior to the terms of the Network Interconnection Methods Rider. In the event there is a conflict between any terms in this Attachment and any other Attachment or Appendix, or to any provision of the Network Interconnection Methods Rider, the Network Interconnection Rider will control. This Attachment and the Network Interconnection Methods Rider were not the result of negotiation under § 252(a) but were instead the result of an arbitration under § 252(b). Therefore, any interpretation must be fully consistent with the standards in the Act and FCC rules.”</p>	<p>improper) and pp. 11 (on trunking issues).</p> <p>UTEX’s Exhibit D is premature. The parties have not reached the stage for preparing conforming contract language. See also Response Brief at pp. 35 (responding to UTEX’s Exhibit D).</p>
AT&T NIM – 7  UTEX Responsive Issue	AT&T: a. Should UTEX be required to use AT&T’s ordering forms and follow its guidelines described via the CLEC Online Website in order to	NIM Section: 2.1  UTEX Attachment NIM and all Appendices and Exhibits, including the Call Flow Diagrams	<i>This issue is addressed in the text of the Award in the section titled “OSS and Ordering.”</i>	<p><i>UTEX has excepted to the section titled “OSS and Ordering.”</i></p> <p><i>In particular UTEX excepts to any finding that AT&amp;T’s current OSS currently incorporates the decisions of this Award.</i></p> <p><i>UTEX has proposed Attachment C as its OSS</i></p>	See AT&T Texas’ Exceptions Brief at pp. 33-34 and Response Brief at pp. 17-20 (OSS issues).

Issue #	Issue Statement	Attachment & Sections	Arbitrators’ Decision	UTEX’ EXCEPTION	AT&T TEXAS’ RESPONSE TO UTEX’S EXCEPTION
	<p>request products from AT&amp;T?</p> <p>AT&amp;T: b. Should UTEX pay the same ordering charges paid by all other CLECs?</p> <p>UTEX: c. Does AT&amp;T’s OSS actually implement the terms of the contract and if not, can AT&amp;T use the fact that its OSS doesn’t work to deny UTEX its rights?</p> <p>UTEX: d. Can either side charge for service orders related to “Interconnection” if that party has cost responsible for its own facilities?</p>			<i>compliance Language as ordered by the Arbitrators.</i>	
AT&T NIM - 8	AT&T: a. Should UTEX be required to follow Industry wide ordering processes and procedures as detailed in the	<p>NIM Sections: 2.2, 2.2.1, 2.3, 2.3.1, 2.3.2</p> <p>UTEX Attachment NIM and all Appendices and</p>	<i>This issue is addressed in the text of the Award in the section titled “OSS and Ordering.”</i>	<p><i>UTEX has excepted to the section titled “OSS and Ordering.”</i></p> <p><i>In particular UTEX excepts to any finding that AT&amp;T’s current OSS currently incorporates the decisions of this Award.</i></p>	See AT&T Texas’ Exceptions Brief at pp. 33-34 and Response Brief at pp. 17-20 (OSS issues).



Issue #	Issue Statement	Attachment & Sections	Arbitrators’ Decision	UTEX’ EXCEPTION	AT&T TEXAS’ RESPONSE TO UTEX’S EXCEPTION
	<p>AT&amp;T CLEC Handbook and AT&amp;T Prime ACCESS?</p> <p>AT&amp;T: b. Should AT&amp;T be required to provision an order which has been improperly submitted and/or fails to define a product or service offering that currently resides within an ICA?</p> <p>UTEX: c. Can AT&amp;T deny UTEX its rights through unilaterally created procedures that do not conform to the Act?</p> <p>UTEX: d. Can UTEX require a manual order in circumstances where no mechanized order capability exists? What are the appropriate liquidated damages in situations where</p>	Exhibits, including the Call Flow Diagrams		<i>UTEX has proposed Attachment C as its OSS compliance Language as ordered by the Arbitrators.</i>	

Issue #	Issue Statement	Attachment & Sections	Arbitrators’ Decision	UTEX’ EXCEPTION	AT&T TEXAS’ RESPONSE TO UTEX’S EXCEPTION
	AT&T breaches the contract?				
AT&T NIM – 9  UTEX Responsive Issue	<p>Should UTEX have unilateral control over the meaning to be given NIM terms when they conflict with other terms in the Agreement?</p> <p>(b) Is AT&amp;T’s intent on the purpose of language clear?</p> <p>(c) If not, can UTEX require that language intent either be made clear or that vague language can not be later interpreted by AT&amp;T to create disputes in the future?</p>	<p>NIM: Section 3.0</p> <p>UTEX Attachment NIM and all Appendices and Exhibits, including the Call Flow Diagrams</p>	<p><i>(a) The Arbitrators find AT&amp;T Texas’s language to be reasonable and adopt it for this ICA.</i></p> <p><i>(b)-(c) The Arbitrators agree with AT&amp;T Texas that it is unclear which language UTEX is referring to and therefore take no action.</i></p>	<p><b>UTEX excepts to B &amp; C. UTEX wishes to avoid future disputes by requiring AT&amp;T to either make its intent known by its proposed language or to not have that language control a specifically arbitrated issue that the language was not proposed to resolve.</b></p> <p><i>UTEX has also incorporated all NIM and NIM related decisions into Exhibit D to highlight the inconsistencies among and between the specific decisions, especially when compared to the PFA award itself. For example while the PFA clearly requires 500 numbers to be routed, SS-7 Signaling Interconnection, and JPA to be provided, multiple language awards to AT&amp;T based solely on “the language was reasonable” or “The language was previously used in another docket” do not provide the analysis needed to prevent disputes created by AT&amp;T’s proposed language and the intent of the award. The language awarded could then potentially be used to frustrate the specific award.</i></p> <p><i>UTEX proposes to solve this problem in the following way.</i></p> <p><i>UTEX has drafted contract language consistent with the PFA as Exhibit A NIM Rider and proposes inclusion of this language to implement the Award as discussed in the PFA.</i></p> <p><i>UTEX next proposes inclusion of the following language on all NIM and ITR and Numbering Appendix and all other relevant ICA documents to ensure that the threshold decisions in the PFA are</i></p>	<p>UTEX provides no reasons for the Arbitrators to reconsider their decision on this issue. The contract language in dispute was UTEX’s proposed language that would have given UTEX the unilateral right to decide which terms in the agreement control whenever there was a conflict.</p> <p>In addition, UTEX cannot add the contract language it proposes in the Attachment A NIM Rider, which was not included in the contract language that Order No. 30 authorized to be arbitrated. For the same reason, UTEX cannot add the proposed insert that would make all other provisions of the agreement “inferior” to UTEX’s proposed Attachment A NIM Rider. See Response Brief at pp. 3-5 (on why new contract language cannot be used).</p> <p>UTEX’s Exhibit D is premature. The parties have not reached the stage for preparing conforming contract language. See also Response Brief at pp. 35 (responding to UTEX’s Exhibit D).</p>

Issue #	Issue Statement	Attachment & Sections	Arbitrators’ Decision	UTEX’ EXCEPTION	AT&T TEXAS’ RESPONSE TO UTEX’S EXCEPTION
				<i>followed through contract implementation:</i>  “The terms of this Attachment are inferior to the terms of the Network Interconnection Methods Rider. In the event there is a conflict between any terms in this Attachment and any other Attachment or Appendix, or to any provision of the Network Interconnection Methods Rider, the Network Interconnection Rider will control. This Attachment and the Network Interconnection Methods Rider were not the result of negotiation under § 252(a) but were instead the result of an arbitration under § 252(b). Therefore, any interpretation must be fully consistent with the standards in the Act and FCC rules.”	
AT&T NIM 1 – 2	Does Section 251(c)(2)’s duty to interconnect require AT&T to offer services and products available to AT&T’s or its affiliates’ end users?	Appendix 1 to NIM: Physical Methods of Interconnection (NIM-1)  Section 1.0	<i>The Arbitrators adopt AT&amp;T Texas’s proposed language because it is reasonable.</i>  <i>The Arbitrators find that UTEX’s proposed language is substantively the same as it proposed in NIM §1.4.5, and decline to adopt it for the reasons set forth in the text of the Award in the section titled “Technically Feasible Forms of Interconnection.”</i>	<i>As long as transit is required and implemented on a reciprocal basis, this is no longer an issue to UTEX.</i>	UTEX provides no reasons for the Arbitrators to reconsider their decision on this issue. With respect to transit, see AT&T Texas’ Response Brief at pp. 11.
AT&T NIM 1 - 3	a. Should UTEX be required to interconnect with AT&T within AT&T’s network?  b. Should AT&T’s Non-Telco affiliates be required to enter into 251/252 interconnection	NIM-1 All of Section 2	<i>(a) and (c) The Arbitrators find that AT&amp;T Texas’s language in §§ 2.0-2.1 is consistent with that adopted for the CLEC Coalition ICA in PUC Docket No. 28821. The Arbitrators therefore adopt AT&amp;T Texas’s proposed language.</i>	<i>UTEX excepts to the language approved on this issue for the reasons set out in its exceptions related to “within the ILEC’s network” and the restrictions on trunking to only “local” that are contained in the CLEC Coalition terms.</i>  <i>PLEASE SEE UTEX EXCEPTIONS TO THE PFA Section 2.1</i>	See AT&T Texas’ Response Brief at pp. 6-9 (responding to UTEX’s Exception to Arbitrators’ finding limiting fiber meet points to AT&T Texas’ offices and tandems).

Issue #	Issue Statement	Attachment & Sections	Arbitrators’ Decision	UTEX’ EXCEPTION	AT&T TEXAS’ RESPONSE TO UTEX’S EXCEPTION
	arrangements?  c What type of trunk groups should be allowed over the Fiber Meet Point?		<i>(b) This issue is addressed in the text of the Award in the section titled “Technically Feasible Forms of Interconnection.”</i>		
AT&T NIM 1 - 5	May UTEX lease facilities outside AT&T’s network at UNE rates for interconnection?	NIM-Sections: 14.0	<p><i>The Arbitrators could not locate NIM Section 14.0, but note that the section referred to in the Direct Testimony of J. Scott McPhee (AT&amp;T Ex. 15) for this DPL issue is NIM Appendix 1, § 4.0.</i></p> <p><i>The Arbitrators note that the FCC has found that facilities outside of the ILEC’s local network that connect a competing carrier’s network with the ILEC’s network should not be considered part of the dedicated transport network element subject to unbundling. (Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competitive Provisions of the Telecommunications Act of 1996, and Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket Nos. 01-388, 96-98, 98-147, Order, FCC 03-36 ¶ 366 (Aug. 21, 2003) (Triennial Review Order)). Accordingly, the FCC eliminated entrance facilities as UNEs. (Id. ¶ 366 n.1116). Therefore, the Arbitrators conclude that pursuant to FCC Rule, 47 C.F.R. §51.319(e)(2), AT&amp;T Texas is not obligated to provide UTEX with unbundled access to entrance facilities. Furthermore, the Commission concluded in Docket No. 28821 that entrance facilities are not available at TELRIC rates for purposes of interconnection. (Docket No. 28821, Arbitration Award –Track 1 Issues at 15-16. (February 22,</i></p>	<p><i>UTEX has drafted contract language consistent with the PFA as Exhibit A NIM Rider and proposes inclusion of this language to implement the Award as discussed in the PFA.</i></p> <p><i>UTEX has also incorporated all NIM and NIM related decisions into Exhibit D to highlight the inconsistencies among and between the specific decisions, especially when compared to the PFA award itself for the threshold issues.</i></p> <p><i>UTEX will not object to this specific award if it is made clear that this award does not conflict with the PFA Award. UTEX proposes inclusion of the following language on all NIM and ITR and Numbering Appendices to ensure that the threshold decisions in the PFA are followed through contract implementation:</i></p> <p><i>“The terms of this Attachment are inferior to the terms of the Network Interconnection Methods Rider. In the event there is a conflict between any terms in this Attachment and any other Attachment or Appendix, or to any provision of the Network Interconnection Methods Rider, the Network Interconnection Rider will control. This Attachment and the Network Interconnection Methods Rider were not the result of negotiation under § 252(a) but were instead the result of an</i></p>	<p>UTEX has provided no basis for its exception. Instead, UTEX proposes use of its newly-drafted Exhibit A NIM Rider, as well as introductory language for all NIM, ITR and Numbering Attachments. UTEX cannot add the contract language it proposes in the Attachment A NIM Rider, which was not included in the contract language that Order No. 30 authorized to be arbitrated. For the same reason, UTEX cannot add the proposed insert that would make all other provisions of the agreement “inferior” to UTEX’s proposed Attachment A NIM Rider. See Response Brief at pp. 3-5 (on why new contract language cannot be used).</p> <p>UTEX’s Exhibit D is premature. The parties have not reached the stage for preparing conforming contract language. See also Response Brief at pp. 35 (responding to UTEX’s Exhibit D).</p>

Issue #	Issue Statement	Attachment & Sections	Arbitrators’ Decision	UTEX’ EXCEPTION	AT&T TEXAS’ RESPONSE TO UTEX’S EXCEPTION
			<p>2005)).</p> <p><i>The Arbitrators, therefore, modify UTEX’s proposed language in §§ 4-4.1.1:</i></p> <p><i>4. Leasing of AT&amp;T TEXAS’ Facilities</i></p> <p><i>4.1.1 UTEX will have the option to lease interconnection facilities at the rates found in Appendix Pricing UNE - Schedule of Prices. It is expressly understood that such leasing is to effect § 251(c)(2) interconnection and is not access to a UNE under § 251(c)(3), notwithstanding the reference to the rates in the price schedule. However, UTEX may not lease AT&amp;T Texas’s facilities outside AT&amp;T Texas’s network for purposes of interconnection at TELRIC rates found in Appendix Pricing UNE - Schedule of Prices if such facilities are no longer classified as UNEs.</i></p> <p><i>However, consistent with the Commission’s conclusion in Docket No. 28821 that the cross-connects associated with entrance facilities used for interconnection should be provided at TELRIC rates, AT&amp;T Texas shall provide cross-connects associated with entrance facilities at TELRIC rates. (Docket No. 28821, Order on Clarification and Reconsideration at 3-4 (May 11, 2005)). The Arbitrators, therefore, adopt UTEX’s proposed language in §§ 5-5.1 that requires AT&amp;T Texas to provide cross-connects for interconnection at TELRIC rates.</i></p>	<p>arbitration under § 252(b). Therefore, any interpretation must be fully consistent with the standards in the Act and FCC rules.”</p> <p>Therefore, any interpretation must be fully consistent with the standards in the Act and FCC rules.”</p>	

Issue #	Issue Statement	Attachment & Sections	Arbitrators’ Decision	UTEX’ EXCEPTION	AT&T TEXAS’ RESPONSE TO UTEX’S EXCEPTION
AT&T NIM 1 - 6	Should UTEX have unilateral control over the meaning to be given NIM terms when they conflict with other terms in the Agreement?	NIM-Section: 16.0	<i>The Arbitrators could not locate NIM Section 16.0 but note that the section referred to in the Direct Testimony of J. Scott McPhee (AT&amp;T Ex. 15) for this DPL issue is NIM Appendix 1, § 6.0. The Arbitrators find AT&amp;T Texas’s language in NIM Appendix 1, § 6.0 to be reasonable and adopt it.</i>		UTEX does not address this issue.
AT&T NIM 2 - 1	<p>a. Should the definition of Points of Interconnection (POI) be included in the agreement?</p> <p>b. Should the definition of Tandem Serving Area be included in the agreement?</p> <p>c. Is SS7 a valid form of Interconnection?</p> <p>UTEX Counter Issue (c) Is signaling an obligation in order to mutually exchange traffic and if so is mutual provision of SS7 signaling a duty when the parties interconnect using SS7?</p>	Appendix 2 to NIM: Interconnection Procedures. (NIM-2) 1.1-1.1a; SPOI Handbook	<p><i>(a)-(b) Definitions of the terms are addressed under GTC – 61.</i></p> <p><i>(c) This issue and associated ICA language are addressed in the text of the Award in the section titled “Technically Feasible Forms of Interconnection.”</i></p>		UTEX does not address this issue.

Issue #	Issue Statement	Attachment & Sections	Arbitrators’ Decision	UTEX’ EXCEPTION	AT&T TEXAS’ RESPONSE TO UTEX’S EXCEPTION
AT&T NIM 2 - 2	Should this attachment detail the need for UTEX to establish additional POIs when UTEX reaches the appropriate threshold of traffic?	NIM-2: Sections 1.1b, 1.1c, 1.1d, 1.1e, 1.1f	<i>The Arbitrators adopt AT&amp;T Texas’s proposed language because it is reasonable.</i>		UTEX does not address this issue.
AT&T NIM 2 - 3	Should UTEX be required to interconnect with AT&T within AT&T’s network	NIM-2: Section 1.2	<i>This issue and associated ICA language are addressed under DPL issue AT&amp;T NIM 1-3(a).</i>	<p><i>UTEX has drafted contract language consistent with the PFA as Exhibit A NIM Rider and proposes inclusion of this language to implement the Award as discussed in the PFA.</i></p> <p><i>UTEX has also incorporated all NIM and NIM related decisions into Exhibit D to highlight the inconsistencies among and between the specific decisions, especially when compared to the PFA award itself for the threshold issues.</i></p> <p><i>UTEX will not object to this specific award if it is made clear that this award does not conflict with the PFA Award. UTEX proposes inclusion of the following language on all NIM and ITR and Numbering Appendices to ensure that the threshold decisions in the PFA are followed through contract implementation:</i></p> <p><i>“The terms of this Attachment are inferior to the terms of the Network Interconnection Methods Rider. In the event there is a conflict between any terms in this Attachment and any other Attachment or Appendix, or to any provision of the Network Interconnection Methods Rider, the Network</i></p>	<p>UTEX has provided no basis for its exception. Instead, UTEX proposes use of its newly-drafted Exhibit A NIM Rider, as well as introductory language for all NIM, ITR and Numbering Attachments. UTEX cannot add the contract language it proposes in the Attachment A NIM Rider, which was not included in the contract language that Order No. 30 authorized to be arbitrated. For the same reason, UTEX cannot add the proposed insert that would make all other provisions of the agreement “inferior” to UTEX’s proposed Attachment A NIM Rider. See Response Brief at pp. 3-5 (on why new contract language cannot be used).</p> <p>UTEX’s Exhibit D is premature. The parties have not reached the stage for preparing conforming contract language. See also Response Brief at pp. 35 (responding to UTEX’s Exhibit D).</p>

Issue #	Issue Statement	Attachment & Sections	Arbitrators’ Decision	UTEX’ EXCEPTION	AT&T TEXAS’ RESPONSE TO UTEX’S EXCEPTION
				Interconnection Rider will control. This Attachment and the Network Interconnection Methods Rider were not the result of negotiation under § 252(a) but were instead the result of an arbitration under § 252(b). Therefore, any interpretation must be fully consistent with the standards in the Act and FCC rules.”	
AT&T NIM 2 – 4  UTEX counter-statement	<p>AT&amp;T: a) Should AT&amp;T’s definition of §251(b)(5)/IntraLAT A Toll Traffic be included in this attachment?</p> <p>AT&amp;T: b) Should this Attachment 2 to NIM contain terms and conditions for Reciprocal Compensation?</p> <p>UTEX: c) Can the PUC award language that is or could be implemented to obtain results that would violate §§ 157, 202, 202, 203, 230, 251 and/or 252 or the FCC’s rules and decisions relating to non-carrier customer traffic and intercarrier</p>	NIM-2: Section: 2.0	<p><i>a) The Arbitrators note that AT&amp;T Texas’s proposed definition of §251(b)(5)/IntraLATA Toll Traffic does not appear in § 2.0. However, AT&amp;T Texas has proposed a definition for §251(b)(5)/IntraLATA Toll Traffic in §2.14 of Appendix ITR. The Arbitrators conclude that it is important to define applicable traffic exchanged between the parties but decline to adopt AT&amp;T Texas’s proposed definition. Instead, the Arbitrators adopt the definition approved in Docket No. 28821 for the CLEC Coalition Agreement, as follows.</i></p> <p><i>“Section 251(b)(5)/IntraLATA Toll Traffic’ shall mean for purposes of this Attachment, (i) Local Traffic, (ii) ISP-Bound Traffic, (iii) Optional EAS traffic, (iv) FX traffic, (iv) Transit Traffic, (v) IntraLATA Toll Traffic originating from an end user obtaining local dialtone from CLEC where CLEC is both the Local Traffic and intraLATA toll provider, and/or (vi) IntraLATA Toll Traffic originating from an end user obtaining local dialtone from AT&amp;T Texas where AT&amp;T Texas is both the Local Traffic and intraLATA toll provider.”</i></p> <p><i>The Arbitrators find that the traffic exchanged between the parties is not limited to § 251(b)(5)/IntraLATA Toll Traffic. Such traffic also includes ESP Traffic, Meet point Traffic, FGA Traffic, InterLATA Interexchange Traffic, and Cellular Traffic.</i></p> <p><i>(b) The Arbitrators conclude that Attachment 2 to NIM</i></p>	<p><b>IMPLEMENTATION EXCEPTION:</b></p> <p><i>UTEX has drafted contract language consistent with the PFA as Exhibit A NIM Rider and proposes inclusion of this language to implement the Award as discussed in the PFA.</i></p> <p><i>UTEX has also incorporated all NIM and NIM related decisions into Exhibit D to highlight the inconsistencies among and between the specific decisions, especially when compared to the PFA award itself for the threshold issues.</i></p> <p><i>UTEX will not object to this specific award related to implementation if it is made clear that this award does not conflict with the PFA Award. UTEX proposes inclusion of the following language on all NIM and ITR and Numbering Appendices to ensure that the threshold decisions in the PFA are followed through contract implementation:</i></p> <p><i>“The terms of this Attachment are inferior to the terms of the Network Interconnection Methods Rider. In the event there is a conflict between any terms in this Attachment and any other Attachment or Appendix, or to any provision of the Network Interconnection Methods Rider, the Network Interconnection Rider will control. This Attachment and the Network Interconnection Methods Rider</i></p>	<p>UTEX has provided no basis for its exception. UTEX has failed to show that the Arbitrators erred in opting for AT&amp;T’s language in NIM-2 Section 2, and has provided no evidence or authority that the Arbitrators’ determinations are inconsistent with the Act and FCC rules.</p> <p>Instead, UTEX proposes use of its newly-drafted Exhibit A NIM Rider, as well as introductory language for all NIM, ITR and Numbering Attachments. UTEX cannot add the contract language it proposes in the Attachment A NIM Rider, which was not included in the contract language that Order No. 30 authorized to be arbitrated. For the same reason, UTEX cannot add the proposed insert that would make all other provisions of the agreement “inferior” to UTEX’s proposed Attachment A NIM Rider. See Response Brief at pp. 3-5 (on why new contract language cannot be used).</p> <p>UTEX’s Exhibit D is premature. The parties have not reached the stage for preparing conforming contract language. See also Response Brief at pp. 35 (responding to UTEX’s Exhibit D).</p>



Issue #	Issue Statement	Attachment & Sections	Arbitrators’ Decision	UTEX’ EXCEPTION	AT&T TEXAS’ RESPONSE TO UTEX’S EXCEPTION
	compensation?		<p><i>should not contain terms and conditions for reciprocal compensation given that compensation terms and conditions are addressed in Attachment 6 to NIM: Inter-carrier Compensation.</i></p> <p><i>(c) The Arbitrators find that this issue does not ask for resolution of specific disputed ICA language. The Arbitrators conclude that the language adopted for this ICA is consistent with the relevant sections of the Federal Telecommunications Act and the FCC rules and decisions relating to intercarrier compensation.</i></p>	<p>were not the result of negotiation under § 252(a) but were instead the result of an arbitration under § 252(b).</p> <p>Therefore, any interpretation must be fully consistent with the standards in the Act and FCC rules.”</p> <p>LEGAL EXCEPTION:</p> <p>Please See UTEX Issue objections 2-11, 13, 15 and 40.</p>	
AT&T NIM 2 - 5	Should UTEX be allowed to unilaterally decide whether a direct end office trunk group should be established as a primary high?	NIM-2: Sections 2.2-2.2.1  AT&T ITR Section 4.3, 4.4	<p><i>The Arbitrators find AT&amp;T Texas’s argument to be reasonable and adopt its language.</i></p>	<p><b>IMPLEMENTATION EXCEPTION:</b></p> <p><i>UTEX has drafted contract language consistent with the PFA as Exhibit A NIM Rider and proposes inclusion of this language to implement the Award as discussed in the PFA.</i></p> <p><i>UTEX has also incorporated all NIM and NIM related decisions into Exhibit D to highlight the inconsistencies among and between the specific decisions, especially when compared to the PFA award itself for the threshold issues.</i></p> <p><i>UTEX will not object to this specific award if it is made clear that this award does not conflict with the PFA Award. UTEX proposes inclusion of the following language on all NIM and ITR and Numbering Appendices to ensure that the threshold decisions in the PFA are followed through contract implementation:</i></p> <p>“The terms of this Attachment are inferior to the terms of the Network Interconnection Methods</p>	<p>UTEX has provided no basis for its exception.</p> <p>Instead, UTEX proposes use of its newly-drafted Exhibit A NIM Rider, as well as introductory language for all NIM, ITR and Numbering Attachments. UTEX cannot add the contract language it proposes in the Attachment A NIM Rider, which was not included in the contract language that Order No. 30 authorized to be arbitrated. For the same reason, UTEX cannot add the proposed insert that would make all other provisions of the agreement “inferior” to UTEX’s proposed Attachment A NIM Rider. See Response Brief at pp. 3-5 (on why new contract language cannot be used).</p> <p>UTEX’s Exhibit D is premature. The parties have not reached the stage for preparing conforming contract language. See also Response Brief at pp. 35 (responding to UTEX’s Exhibit D).</p>

Issue #	Issue Statement	Attachment & Sections	Arbitrators’ Decision	UTEX’ EXCEPTION	AT&T TEXAS’ RESPONSE TO UTEX’S EXCEPTION
				Rider. In the event there is a conflict between any terms in this Attachment and any other Attachment or Appendix, or to any provision of the Network Interconnection Methods Rider, the Network Interconnection Rider will control. This Attachment and the Network Interconnection Methods Rider were not the result of negotiation under § 252(a) but were instead the result of an arbitration under § 252(b). Therefore, any interpretation must be fully consistent with the standards in the Act and FCC rules.”	
AT&T NIM 2 - 6	<p>a. Should UTEX be allowed to incorporate its own unique ordering and provisioning processes for requesting Interconnection trunks and facilities?</p> <p>b. Should UTEX be required to use AT&amp;T’s ordering forms and follow its guidelines described via the CLEC Online Website in order to request those products it seeks to obtain from AT&amp;T?</p> <p>c. Is SS7 a valid form of Interconnection?</p>	NIM-2: Sections 2.3 2.3.1 2.3.2	<p><i>(a)-(b) This issue is addressed in the text of the Award in the section titled “OSS and Ordering.”</i></p> <p><i>(c) This issue and associated ICA language are addressed in the text of the Award in the section titled “Technically Feasible Forms of Interconnection.”</i></p>	<p><i>UTEX has excepted to the section titled “OSS and Ordering.”</i></p> <p><i>UTEX has excepted to the section titled “Technically Feasible Forms of Interconnection.”</i></p> <p><i>Please See UTEX Proposed Attachment C for OSS.</i></p> <p><i>UTEX has drafted contract language consistent with the PFA as Exhibit A NIM Rider and proposes inclusion of this language to implement the Award as discussed in the PFA.</i></p>	<p>See AT&amp;T Texas’ Exceptions Brief at pp. 33-34 and Response Brief at pp. 17-20 (addressing OSS issues)</p> <p>UTEX cannot add the contract language it proposes in the Attachment A NIM Rider, which was not included in the contract language that Order No. 30 authorized to be arbitrated. See Response Brief at pp. 3-5 (on why new contract language cannot be used).</p>

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AT&T NIM 2 - 7	<p>a. Is SS7 a valid form of Interconnection?</p> <p>b. Is ISDN PRI a valid form of Interconnection?</p> <p>c. Are physical technologies used for internal communications appropriate methods of interconnection?</p> <p>UTEX Issues (d) Is ISDN PRI a Technically feasible method of Interconnection?</p> <p>(e) Is ATM a Technically Feasible Method of Interconnection?</p>	<p>NIM-2: Sections: 2.4-2.4.1</p> <p>UTEX Attachment NIM Appendix 3 (ISDN Interconnection</p>	<p>(a)-(e) This issue and associated ICA language are addressed in the text of the Award in the section titled “Technically Feasible Forms of Interconnection.”</p>	<p>UTEX has excepted to a portion of the section titled “Technically Feasible Forms of Interconnection.”</p> <p>UTEX has drafted contract language consistent with the PFA as Exhibit A NIM Rider and proposes inclusion of this language to implement the Award as discussed in the PFA</p>	<p>UTEX has provided no basis for its exception. UTEX cannot add the contract language it proposes in the Attachment A NIM Rider, which was not included in the contract language that Order No. 30 authorized to be arbitrated. For the same reason, UTEX cannot add the proposed insert that would make all other provisions of the agreement “inferior” to UTEX’s proposed Attachment A NIM Rider. See Response Brief at pp. 3-5 (on why new contract language cannot be used).</p> <p>See also Response Brief at pp. 7, 10-11 and 20 (on SS7 signaling)</p> <p>AT&amp;T continues to maintain that ATM is not a technically feasible method of Interconnection.</p>
AT&T NIM 2 - 8	<p>AT&amp;T: a. Should UTEX be allowed to begin interconnection prior to submitting the appropriate orders, forms, CLLI codes,</p>	<p>NIM-2: Section: 3.1</p>	<p>(a) The Arbitrators find AT&amp;T Texas’s argument to be reasonable and adopt its proposed language.</p>	<p>IMPLEMENTATION EXCEPTION (a):</p> <p>UTEX has drafted contract language consistent with the PFA as Exhibit A NIM Rider and proposes inclusion of this language to implement the Award as discussed in the PFA.</p>	<p>UTEX has provided no basis for its exception.</p> <p>Instead, UTEX proposes use of its newly-drafted Exhibit A NIM Rider, as well as introductory language for all NIM, ITR and Numbering Attachments. UTEX cannot add the contract language it proposes in the Attachment A NIM</p>

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	<p>Point Codes and/or diagrams?</p> <p>UTEX: b. Can AT&amp;T deny interconnection of new technology traffic?</p>		<p><i>(b) The Arbitrators concur with AT&amp;T Texas that New Technology traffic is not a defined term in this agreement. Furthermore, the Arbitrators find no reference to this issue in the referenced language. Therefore the Arbitrators adopt no language for this issue.</i></p>	<p><i>UTEX has also incorporated all NIM and NIM related decisions into Exhibit D to highlight the inconsistencies among and between the specific decisions, especially when compared to the PFA award itself for the threshold issues.</i></p> <p><i>UTEX will not object to this specific award if it is made clear that this award does not conflict with the PFA Award. UTEX proposes inclusion of the following language on all NIM and ITR and Numbering Appendices to ensure that the threshold decisions in the PFA are followed through contract implementation:</i></p> <p>“The terms of this Attachment are inferior to the terms of the Network Interconnection Methods Rider. In the event there is a conflict between any terms in this Attachment and any other Attachment or Appendix, or to any provision of the Network Interconnection Methods Rider, the Network Interconnection Rider will control. This Attachment and the Network Interconnection Methods Rider were not the result of negotiation under § 252(a) but were instead the result of an arbitration under § 252(b). Therefore, any interpretation must be fully consistent with the standards in the Act and FCC rules.”</p> <p>(b) UTEX Notes that AT&amp;T is obligated to interconnect for all traffic via Discussion in the PFA.</p>	<p>Rider, which was not included in the contract language that Order No. 30 authorized to be arbitrated. For the same reason, UTEX cannot add the proposed insert that would make all other provisions of the agreement “inferior” to UTEX’s proposed Attachment A NIM Rider. See Response Brief at pp. 3-5 (on why new contract language cannot be used).</p> <p>UTEX’s Exhibit D is premature. The parties have not reached the stage for preparing conforming contract language. See also Response Brief at pp. 35 (responding to UTEX’s Exhibit D).</p>
AT&T NIM 2 - 9	(a) Are channelized DS3, OC3, or OC12 valid methods of Interconnection?	NIM-2: Section 4.0	<p><i>(a) The Arbitrators find that, while they do not constitute entire methods of interconnection, DS3, OC3 and OC12 are used as underlying transmission technologies for interconnection. The Arbitrators find that AT&amp;T Texas has not met its burden to prove that</i></p>	<p><b>IMPLEMENTATION EXCEPTION:</b></p> <p><i>UTEX has drafted contract language consistent with the PFA as Exhibit A NIM Rider and proposes inclusion of this language to implement the Award</i></p>	<p>See AT&amp;T Texas’ Response to UTEX’s Exceptions in NIM 2-8.</p>

Issue #	Issue Statement	Attachment & Sections	Arbitrators’ Decision	UTEX’ EXCEPTION	AT&T TEXAS’ RESPONSE TO UTEX’S EXCEPTION
	(b) May UTEX lease facilities outside AT&T’s network at UNE rates?		<p><i>these are not technically feasible methods of interconnection.</i></p> <p><i>(b) For reasons stated under DPL issue AT&amp;T NIM 1-5, the Arbitrators decline to adopt UTEX’s proposed language “or from AT&amp;T Texas” in §4.0.</i></p> <p><i>The Arbitrators adopt UTEX’s proposed language with modification:</i></p> <p><i>“4.0 Physical Interconnection – UTEX will interconnect with <u>AT&amp;T TEXAS</u> via any technically feasible method and location as described in Appendix 1 to NIM. <u>This is to include interconnecting via channelized DS3, OC3, or OC12.</u> UTEX may lease facilities from a third party provider (including CLECs or IXCs) <del>or from AT&amp;T TEXAS</del> and interconnect with AT&amp;T TEXAS over those facilities. In cases where interconnection is to take place at a third party APOT or CFA within an AT&amp;T TEXAS location, UTEX must <del>need to</del> have on file the appropriate LOA to order interconnection facilities to that termination. As well, UTEX may interconnect over facilities (including network equipment, collocation space, and transport) that it purchases from another carrier.”</i></p>	<p><i>as discussed in the PFA.</i></p> <p><i>UTEX has also incorporated all NIM and NIM related decisions into Exhibit D to highlight the inconsistencies among and between the specific decisions, especially when compared to the PFA award itself for the threshold issues.</i></p> <p><i>UTEX will not object to this specific award if it is made clear that this award does not conflict with the PFA Award. UTEX proposes inclusion of the following language on all NIM and ITR and Numbering Appendices to ensure that the threshold decisions in the PFA are followed through contract implementation:</i></p> <p><i>“The terms of this Attachment are inferior to the terms of the Network Interconnection Methods Rider. In the event there is a conflict between any terms in this Attachment and any other Attachment or Appendix, or to any provision of the Network Interconnection Methods Rider, the Network Interconnection Rider will control. This Attachment and the Network Interconnection Methods Rider were not the result of negotiation under § 252(a) but were instead the result of an arbitration under § 252(b). Therefore, any interpretation must be fully consistent with the standards in the Act and FCC rules.”</i></p>	
AT&T NIM 2 - 10	Should UTEX be required to route traffic to the appropriate serving AT&T-Tandem or End office based on	NIM-2: Section 5.0	<p><i>UTEX’s call flow diagrams are addressed under DPL issue UTEX 31. The Arbitrators concur with AT&amp;T Texas regarding efficiency of routing and concerns for tandem exhaust, and reject UTEX’s proposed language.</i></p>	<p><i>UTEX has excepted to UTEX 31.</i></p> <p><i>IMPLEMENTATION EXCEPTION:</i></p> <p><i>UTEX has drafted contract language consistent with the PFA as Exhibit A NIM Rider and proposes</i></p>	<p>UTEX has provided no basis for its exception.</p> <p>Instead, UTEX proposes use of its newly-drafted Exhibit A NIM Rider, as well as introductory language for all NIM, ITR and Numbering Attachments. UTEX cannot add the contract</p>

Issue #	Issue Statement	Attachment & Sections	Arbitrators’ Decision	UTEX’ EXCEPTION	AT&T TEXAS’ RESPONSE TO UTEX’S EXCEPTION
	the jurisdictional nature of the traffic and LERG designations?			<p><i>inclusion of this language to implement the Award as discussed in the PFA.</i></p> <p><i>UTEX will not object to this specific award related to call flows if language is adopted to resolve the signaling, routing, rating and billing issues for all call types.</i></p>	language it proposes in the Attachment A NIM Rider, which was not included in the contract language that Order No. 30 authorized to be arbitrated. For the same reason, UTEX cannot add the proposed insert that would make all other provisions of the agreement “inferior” to UTEX’s proposed Attachment A NIM Rider. See Response Brief at pp. 3-5 (on why new contract language cannot be used).
AT&T NIM 2 – 11  UTEX Counter Issue	<p>AT&amp;T: a). Should UTEX be required to issue ASRs for all trunk groups and facilities?</p> <p>AT&amp;T: b) Should UTEX be required to pay all charges associated with ordering trunks and facilities related to establishing and maintaining an efficient Network for Interconnecting with AT&amp;T?</p> <p>UTEX: (c) Can AT&amp;T lawfully charge for “interconnection” work on its side of the POI?</p>	NIM-2: Sections 7.0. 7.1, 7.1.1 7.1.2, 7.1.1.1, 7.1.2.2, 7.1.2.3, 7.1.2.4 7.2	<p><i>(a)-(c) The Arbitrators conclude that ILECs are entitled to compensation for the work that they do at the request of CLECs. The practice of having the ILEC charge the CLEC for orders is a standard practice and is reasonable. Furthermore, the FCC stated in its First Report and Order, CC Docket No. 96-98, ¶ 200 that, to the extent that ILECs incur costs to provide interconnection under § 251(c)(2), they are entitled to compensation for such costs from the requesting carrier.</i></p> <p><i>AT&amp;T Texas’s proposed language stipulates that each party will be responsible for the costs of facilities on its side of the POI. The Arbitrators find AT&amp;T Texas’s proposed language to be reasonable and adopt it.</i></p> <p><i>(d) The Arbitrators find that this issue does not ask for resolution of specific disputed ICA language. The Arbitrators conclude that the language adopted for this ICA is consistent with the relevant sections of the Federal Telecommunications Act and the FCC rules and decisions relating to intercarrier compensation.</i></p>	<p><b>IMPLEMENTATION EXCEPTION:</b></p> <p><i>Consistent with the Arbitrators rulings on issues (a) through (c) and the law cited by the Arbitrators, and with the Arbitrators’ understanding that the AT&amp;T and UTEX both proposed to bear all facility costs on its side of the POI, UTEX has drafted contract language consistent with the PFA as Exhibit A NIM Rider for all interconnection issues (fiber meets, and signaling among them) and proposes inclusion of this language to implement the Award as discussed in the PFA.</i></p> <p><i>UTEX has also incorporated all NIM and NIM related decisions into Exhibit D to highlight the inconsistencies among and between the specific decisions, especially when compared to the PFA award itself for the threshold issues. In particular to this issues the Arbitrators found each party is responsible for costs of facilities on its side of the POI, but UTEX is concerned that the actual language could be read otherwise. UTEX set up this result in its NIM Rider.</i></p> <p><i>UTEX will not object to this specific award if it is</i></p>	See AT&T Texas’ Response to UTEX’s Exceptions in NIM 2-8

Issue #	Issue Statement	Attachment & Sections	Arbitrators’ Decision	UTEX’ EXCEPTION	AT&T TEXAS’ RESPONSE TO UTEX’S EXCEPTION
	UTEX: (d) Can the PUC award language that is or could be implemented to obtain results that would violate §§ 157, 202, 202, 203, 230, 251 and/or 252 or the FCC’s rules and decisions relating to non-carrier customer traffic and intercarrier compensation?			<p><i>made clear that this award does not conflict with the PFA Award. UTEX proposes inclusion of the following language on all NIM and ITR and Numbering Appendices to ensure that the threshold decisions in the PFA are followed through contract implementation:</i></p> <p>“The terms of this Attachment are inferior to the terms of the Network Interconnection Methods Rider. In the event there is a conflict between any terms in this Attachment and any other Attachment or Appendix, or to any provision of the Network Interconnection Methods Rider, the Network Interconnection Rider will control. This Attachment and the Network Interconnection Methods Rider were not the result of negotiation under § 252(a) but were instead the result of an arbitration under § 252(b). Therefore, any interpretation must be fully consistent with the standards in the Act and FCC rules.”</p>	
AT&T NIM 2 - 12	Is UTEX required to provide to AT&T the appropriate location identifiers for ordering trunks and facilities for Interconnection?	NIM-2: Section 7.3	<i>This issue is addressed in the text of the Award in the section titled “OSS and Ordering.”</i>	<p><i>UTEX has excepted to the section titled “OSS and Ordering.”</i></p> <p><i>Please see UTEX Attachment C.</i></p>	<p>UTEX has provided no basis for its exception.</p> <p>Instead, UTEX proposes use of its newly-drafted Attachment C. See Response Brief at pp. 17-20 (addressing problems with Attachment C).</p>
AT&T NIM 2 – 13	a. Should UTEX be allowed to have its own unique ordering and provisioning processes for requesting Interconnection trunks and facilities?	NIM-2: Sections 8.0 9.2 9.3- 9.3.3  See new contract references in NIM 7, NIM 8 and NIM 2-6 (a) and (b)	<i>This issue is addressed in the text of the Award in the section titled “OSS and Ordering.”</i>	<p><i>UTEX has excepted to the section titled “OSS and Ordering.”</i></p> <p><i>Please see UTEX Attachment C.</i></p>	<p>UTEX has provided no basis for its exception.</p> <p>Instead, UTEX proposes use of its newly-drafted Attachment C. See Response Brief at pp. 17-20 (addressing problems with Attachment C).</p>

Issue #	Issue Statement	Attachment & Sections	Arbitrators’ Decision	UTEX’ EXCEPTION	AT&T TEXAS’ RESPONSE TO UTEX’S EXCEPTION
	b. Should UTEX be required to use AT&T’s ordering forms and follow its guidelines described via the CLEC Online Website in order to request products from AT&T?				
AT&T NIM 2 - 14	<p>AT&amp;T: a) May UTEX combine originating 251(b)(5) Traffic, intraLATA toll traffic, and interLATA toll traffic on the same trunk groups?</p> <p>AT&amp;T: b) Should UTEX be financially responsible for interconnection facilities on its side of POI?</p> <p>UTEX: c) Should AT&amp;T be financially responsible for interconnection facilities on its side of POI?</p> <p>UTEX: d) Can the</p>	NIM-2: Sections 9.0-9.1	<p><i>(a) The Arbitrators concur with AT&amp;T Texas that, to ensure proper intercarrier compensation, these types of traffic should not be carried on the same trunk group. The Arbitrators, therefore, reject UTEX’s proposed language and adopt AT&amp;T Texas’s proposed language.</i></p> <p><i>(b)-(c) This issue and associated ICA language are addressed under DPL issue AT&amp;T NIM 4(a)-(b).</i></p> <p><i>(d) The Arbitrators find that this issue does not ask for resolution of specific disputed ICA language. The Arbitrators conclude that the language adopted for this ICA is consistent with the relevant sections of the Federal Telecommunications Act and the FCC rules and decisions relating to intercarrier compensation.</i></p>	<p><b>IMPLEMENTATION EXCEPTION:</b></p> <p><i>UTEX has drafted contract language consistent with the PFA as Exhibit A NIM Rider and proposes inclusion of this language to implement the Award as discussed in the PFA.</i></p> <p><i>UTEX has also incorporated all NIM and NIM related decisions into Exhibit D to highlight the inconsistencies among and between the specific decisions, especially when compared to the PFA award itself for the threshold issues.</i></p> <p><i>UTEX will not object to this specific award related to implementation if it is made clear that this award does not conflict with the PFA Award. UTEX proposes inclusion of the following language on all NIM and ITR and Numbering Appendices to ensure that the threshold decisions in the PFA are followed through contract implementation:</i></p> <p>“The terms of this Attachment are inferior to the terms of the Network Interconnection Methods Rider. In the event there is a conflict between any</p>	See AT&T Texas’ Response to UTEX’s Exceptions to NIM 2-8



Issue #	Issue Statement	Attachment & Sections	Arbitrators’ Decision	UTEX’ EXCEPTION	AT&T TEXAS’ RESPONSE TO UTEX’S EXCEPTION
	PUC award language that is or could be implemented to obtain results that would violate §§ 157, 202, 202, 203, 230, 251 and/or 252 or the FCC’s rules and decisions relating to non-carrier customer traffic and intercarrier compensation?			terms in this Attachment and any other Attachment or Appendix, or to any provision of the Network Interconnection Methods Rider, the Network Interconnection Rider will control. This Attachment and the Network Interconnection Methods Rider were not the result of negotiation under § 252(a) but were instead the result of an arbitration under § 252(b). Therefore, any interpretation must be fully consistent with the standards in the Act and FCC rules.”  LEGAL EXCEPTION:  Please See UTEX Issue Exceptions 2-11, 13, 15 and 40.	
AT&T NIM 2 - 15	AT&T: a) Is AT&T required to provide Interconnection facilities and/or UNEs to UTEX so that UTEX can directly Interconnect with a third party carrier?  UTEX: b) Can AT&T Block traffic to transit customers of UTEX?	NIM-2: Sections 10.0-10.2	<i>(a) The Arbitrators find that the FTA does not require ILECs to provide facilities to connect CLECs to other carriers at TELRIC rates. The Arbitrators decline to adopt UTEX’s proposed language.</i>  <i>(b) Transit obligations of both parties are addressed in the text of the Award in the section titled “Transit Services.” The Arbitrators find that UTEX has proposed no language directly related to this issue. Therefore, the Arbitrators take no action on language with respect to this issue.</i>	<i>UTEX <b>did</b> propose transit terms in its 2010 “refresh proposal that were wrongly struck by the Arbitrators. The original 2005 terms that UTEX was required to advance <b>also</b> had transit terms. UTEX’s 2005 transit terms are found in UTEX’s proposed 3 NIM SS7 SPOI Exhibit 3 §§ 4.1, 5.1, 7.1, 9.1, 9.2 and Table of Mutual Compensation rates. UTEX’s Attachment 6 Compensation also had reciprocal transit terms in § 1.1, 1.4, 3.1, 7.0. Those terms clearly contemplated that AT&amp;T would route traffic to UTEX if another carriers designated UTEX’s POI as the routing point; that is how transit works. All UTEX seeks is a holding in the final Award that AT&amp;T cannot unilaterally refuse to honor another carrier’s direct routing instructions to use UTEX as a Transit Provider for indirect interconnection.</i>	The Arbitrators properly rejected UTEX’s “refresh” language in their Order No. 30. See Response Brief at pp. 3-5 (explaining why new contract language cannot be added) and at pp. 8-9, 11 (addressing transit). The Arbitrators properly found that (1) that language they approved properly addressed transit and (2) UTEX failed to propose any other language related to transit.

Issue #	Issue Statement	Attachment & Sections	Arbitrators’ Decision	UTEX’ EXCEPTION	AT&T TEXAS’ RESPONSE TO UTEX’S EXCEPTION
AT&T NIM 3 - 8	<p>a. Should UTEX be allowed to have its own unique ordering and provisioning processes for requesting Interconnection?</p> <p>b. Should UTEX be required to use AT&amp;T’s ordering forms and follow its guidelines in the CLEC Online Website in order to request products from AT&amp;T?</p>	<p>[NIM 3]</p> <p>Appendix C</p> <p>Sections</p> <p>1.0</p> <p>3.0</p> <p>4.0</p> <p>5.0</p> <p>6.0</p>	<p><i>This issue is addressed in the text of the Award in the section titled “OSS and Ordering.”</i></p>	<p><i>UTEX has excepted to the section titled “OSS and Ordering.”</i></p> <p><i>Please See UTEX Attachment C.</i></p>	<p>UTEX has provided no basis for its exception.</p> <p>Instead, UTEX proposes use of its newly-drafted Attachment C. See Response Brief at pp. 17-20 (addressing problems with Attachment C).</p>
AT&T NIM 6 – 1  UTEX Respon sive Issues:	<p>AT&amp;T: a) Should traffic subject to reciprocal compensation under Section 251(b)(5) be called “Section 251(b)(5)” traffic or “local” traffic?</p> <p>AT&amp;T: b) What is the proper definition and scope of Section 251(b)(5) Traffic and ISP-Bound Traffic in accordance with the</p>	<p>Appendix 6 to NIM: Intercarrier Compensation (NIM-6): Sections: 1.0, 1.1, 1.2, 1.4.4</p>	<p><i>The Arbitrators address the language proposed in §§ 1.0, 1.1, 1.2, and 1.4.4 of Attachment 6 to NIM: Intercarrier Compensation under this DPL issue.</i></p> <p><i>(a) The Arbitrators conclude that the ICA should refer to “Local Traffic” instead of “Section 251(b)(5) Traffic.” In the ISP Remand Order and the Core Mandamus Order, the FCC concluded that FTA § 251(b)(5) is not limited to local traffic. (In the Matter of Intercarrier Compensation for ISP-Bound Traffic, CC 99-68, Order on Remand and Report and Order ¶34, 16 FCC Rcd. 9151 (rel. Apr. 27, 2001); In the Matter of Intercarrier Compensation for ISP-Bound Traffic, CC Docket 99-68, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking ¶ 8, 24 FCC Rcd. 6475 (rel. Nov. 5, 2008)). In light of the FCC’s</i></p>	<p><b>IMPLEMENTATION OBJECTION:</b></p> <p><i>UTEX has drafted contract language consistent with the PFA as Exhibit A NIM Rider and proposes inclusion of this language to implement the Award as discussed in the PFA.</i></p> <p><i>UTEX has also incorporated all NIM and NIM related decisions into Exhibit D to highlight the inconsistencies among and between the specific decisions, especially when compared to the PFA award itself for the threshold issues.</i></p> <p><i>UTEX will not object to this specific award related to implementation if it is made clear that this award does not conflict with the PFA Award. UTEX proposes inclusion of the following language on all</i></p>	<p>UTEX has provided no basis for its exception.</p> <p>Instead, UTEX proposes use of its newly-drafted Exhibit A NIM Rider, as well as introductory language for all NIM, ITR and Numbering Attachments. UTEX cannot add the contract language it proposes in the Attachment A NIM Rider, which was not included in the contract language that Order No. 30 authorized to be arbitrated. For the same reason, UTEX cannot add the proposed insert that would make all other provisions of the agreement “inferior” to UTEX’s proposed Attachment A NIM Rider. See Response Brief at pp. 3-5 (on why new contract language cannot be used). See also Exceptions Brief at pp. 4-23 (on why compensation terms for ESP traffic are wrong).</p>

Issue #	Issue Statement	Attachment & Sections	Arbitrators’ Decision	UTEX’ EXCEPTION	AT&T TEXAS’ RESPONSE TO UTEX’S EXCEPTION
	<p>FCC’s ISP Terminating Compensation Plan?</p> <p>AT&amp;T: c) Should the provisions of the Inter-carrier Compensation attachment apply to local Resale services?</p> <p>UTEX: d) Can 251(b)(5) and 251(g) be read and implemented to counter the ACT’s intent in Section 157, 201, 202, 203 and 230?</p> <p>UTEX: e) what is inter-carrier compensation under the Act?</p> <p>UTEX: f) Is Transit a reciprocal obligation under the ACT?</p> <p>UTEX: g) What are all of the traffic types that will be exchanged between LECs and how</p>		<p><i>conclusion regarding the scope of FTA § 251(b)(5), the ICA contains compensation provisions for several types of traffic subject to that provision (e.g., Optional EAS Traffic). Referring to only one of those types of traffic as “Section 251(b)(5) Traffic” could, therefore, be misleading.</i></p> <p><i>The Arbitrators note that the FCC previously determined that state commissions have the authority to determine which geographic areas should be considered “local areas” for the purpose of applying reciprocal compensation obligations under FTA § 251(b)(5). (In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket 96-98, First Report and Order ¶ 1035, 11 FCC Record 15499 (rel. Aug. 8, 1996)). In Docket No. 28821 under Inter-carrier Compensation DPL SBC-2 , the Commission reaffirmed its previous determination that reciprocal compensation arrangements apply to calls that originate from and terminate to an end-user within a mandatory single or multi-exchange local calling area, including the mandatory EAS/ELCS areas comprised of SBC exchanges and the mandatory EAS/ELCS areas comprised of SBC exchanges and exchanges of independent ILECs. (Docket No. 28821, Arbitration Award – Track 1 Issues , Inter-carrier Compensation – JT DPL – Final, DPL Issue SBC-2 at page 1 of 84 (February 22, 2005)). The Arbitrators note that the calls classified by AT&amp;T Texas as Section 251(b)(5) Traffic in § 1.2 mirror, in large part, the type of calls determined by the Commission in Docket No. 28821 to be subject to reciprocal compensation. Therefore, the Arbitrators conclude</i></p>	<p><i>NIM and ITR and Numbering Appendices to ensure that the threshold decisions in the PFA are followed through contract implementation:</i></p> <p>“The terms of this Attachment are inferior to the terms of the Network Interconnection Methods Rider. In the event there is a conflict between any terms in this Attachment and any other Attachment or Appendix, or to any provision of the Network Interconnection Methods Rider, the Network Interconnection Rider will control. This Attachment and the Network Interconnection Methods Rider were not the result of negotiation under § 252(a) but were instead the result of an arbitration under § 252(b). Therefore, any interpretation must be fully consistent with the standards in the Act and FCC rules.”</p> <p>LEGAL Exception:</p> <p>Please See UTEX Issue objections 2-11, 13, 15 and 40.</p>	<p>UTEX’s Exhibit D is premature. The parties have not reached the stage for preparing conforming contract language. See also Response Brief at pp. 35 (responding to UTEX’s Exhibit D).</p>

Issue #	Issue Statement	Attachment & Sections	Arbitrators’ Decision	UTEX’ EXCEPTION	AT&T TEXAS’ RESPONSE TO UTEX’S EXCEPTION
	<p>should they be signaled, routed, rated and billed?</p> <p>UTEX: h)Is there any kind of traffic that is technically feasible to exchange, but which AT&amp;T has no obligation to exchange under the act? If so what are the terms for this type of traffic?</p> <p>UTEX: i) Can AT&amp;T refuse to include its actual “market” intent of its proposed language by refusing to participate in the mutual create of explicit call flow diagrams for all traffic to be passed under this agreement?</p>		<p><i>that it would be appropriate to refer to these calls as “Local Traffic” as proposed by UTEX rather than “Section 251(b)(5) Traffic” in Attachment 6. Furthermore, the Arbitrators find that it is appropriate to include references to traffic other than local traffic such as ISP-Bound Traffic, Transit Traffic, ESP Traffic, Optional EAS Traffic, IntraLATA Interexchange Traffic, InterLATA Interexchange Traffic, FX Traffic, FGA Traffic, Cellular Traffic, and Meet Point Billing Traffic in § 1.1 because Attachment 6 addresses intercarrier compensation for those types of traffic.</i></p> <p><i>AT&amp;T Texas also proposes language in § 1.1 that applies the provisions of this attachment to traffic originated by UTEX over local circuit switching purchased by UTEX from AT&amp;T Texas on a wholesale basis (non-resale). The Arbitrators conclude that this language should be included in the ICA because these compensation provisions apply irrespective of whether UTEX uses its own facilities or purchases facilities on a wholesale basis.</i></p> <p><i>The Arbitrators decline to adopt UTEX’s proposed language in §1.0 and §1.4.4, which state that no intercarrier compensation is due or payable for traffic that is delivered to or received from a non SS-7 Interconnection method such as ISDN, ATM, or SIP or for traffic delivered to a customer via a packet switch technology such as Ethernet, DSL, or Gig E, respectively The Arbitrators find that the appropriate intercarrier compensation for the various types of traffic exchanged between UTEX and AT&amp;T Texas is addressed in other sections of Attachment 6 and does not depend on the type of</i></p>		

Issue #	Issue Statement	Attachment & Sections	Arbitrators’ Decision	UTEX’ EXCEPTION	AT&T TEXAS’ RESPONSE TO UTEX’S EXCEPTION
			<p><i>interconnection or technology used to exchange the traffic. For the same reason, the Arbitrators also conclude that the references to SS-7 interconnection in § 1.1 should be removed.</i></p> <p><i>(b) With respect to § 1.2, the Arbitrators note that that the ICA language describing the calls that would be classified as local traffic does not address calls that originate and terminate to end users within an AT&amp;T Texas exchange and an independent ILEC exchange that share a common mandatory local calling area. Consistent with the Commission’s decision in Docket No. 28821 under Intercarrier Compensation DPL Issue SBC-2, the Arbitrators conclude that such calls between end users located within an AT&amp;T Texas exchange and an independent ILEC exchange that share a common mandatory local calling area should be classified as local traffic. Therefore, the Arbitrators modify the first sentence in § 1.2 as follows:</i></p> <p><i>“Calls originated by <del>UTEX</del> CLEC’s end users and terminated to AT&amp;T TEXAS’ end users (or vice versa) will be classified as Local Traffic under this Agreement if: (i) the calls <u>both originates and terminates to such end users</u> in the same AT&amp;T TEXAS exchange area; or (ii ) <u>the calls both originates and terminates to such end users</u> within different AT&amp;T TEXAS Exchanges that share a common mandatory local calling area <u>or within an AT&amp;T Texas exchange and an independent ILEC exchange that share a common mandatory local calling area, as defined in AT&amp;T Texas’s tariff, e.g., mandatory Extended Area Service (EAS), mandatory Extended Local Calling Service (ELCS), or other like types of mandatory expanded</u></i></p>		

Issue #	Issue Statement	Attachment & Sections	Arbitrators’ Decision	UTEX’ EXCEPTION	AT&T TEXAS’ RESPONSE TO UTEX’S EXCEPTION
			<p><i>local calling scopes.”</i></p> <p><i>Further, the Arbitrators conclude that UTEX’s proposed language in § 1.2 classifying traffic to or from enhanced service providers as local traffic should not be adopted for the reasons stated in the text of the Award in the section titled “Intercarrier Compensation for Traffic Involving UTEX’s ESP Customers.”</i></p> <p><i>The Arbitrators decline to adopt UTEX’s proposed language in § 1.2, which classifies FX traffic as local traffic if the CLEC has established a single point of interconnection (SPOI) within the LATA. Consistent with the Commission’s decision in Docket No. 24015, the only type of FX traffic classified as local traffic and subject to reciprocal compensation for local traffic is the FX traffic that originates and terminates within the Commission-defined mandatory local calling area. (Consolidated Complaints and Requests for Post-Interconnection Dispute Resolution regarding Inter-carrier Compensation for “FX-TYPE” Traffic against Southwestern Bell Telephone Company, Docket No.. 24015, Revised Arbitration Award at 49 (August 28, 2002)). The Arbitrators do not see the need to separately classify such FX traffic from other “local” traffic. The issue of intercarrier compensation for FX traffic is addressed under AT&amp;T NIM 6-3. The Arbitrators find that AT&amp;T Texas’s proposed language regarding compensation for ISP-Bound traffic is not the same as the language approved for the CJP ICA in Docket No. 28821, and therefore the Arbitrators adopt the following language from the CJP ICA for</i></p>		

Issue #	Issue Statement	Attachment & Sections	Arbitrators’ Decision	UTEX’ EXCEPTION	AT&T TEXAS’ RESPONSE TO UTEX’S EXCEPTION
			<p>§1.2:</p> <p><i>“For the purpose of reciprocal compensation, a call to an Internet Service Provider is classified as “Local Traffic” if it meets either requirement in (i) or (ii). Calls originated by AT&amp;T Texas’s end users and terminated to an ISP served by a CLEC (or vice versa) will be classified as compensable “ISP-Bound Traffic” in accordance with the FCC’s Order on Remand and Report and Order, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic, FCC 01-131, CC Docket Nos. 96-98, 99-68 (rel. April 27, 2001) (FCC ISP Compensation Order) if the call (i) originates from end users and terminates to an ISP in the same AT&amp;T Texas exchange area; or (ii) originates from end users and terminates to an ISP within different AT&amp;T Texas exchanges or within an AT&amp;T Texas exchange and an independent ILEC exchange that share common mandatory local calling area, as defined in AT&amp;T Texas’s tariff, e.g., mandatory Extended Area Service (EAS), mandatory Extended Local Calling Service (ELCS), or other like types of mandatory expanded local calling scopes.”</i></p> <p><i>(c) The Arbitrators decline to adopt UTEX’s proposed language in §1.1, which would apply the intercarrier compensation provisions of the attachment to traffic originated over services provided under local Resale services when the traffic originates from or terminates to a UTEX SS-7 Switch. UTEX has not provided any explanation supporting its proposed language. The Arbitrators find the language in §1.1 stating that the</i></p>		

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			<p><i>intercarrier compensation provisions do not apply to traffic originated over services provided under local Resale services to be reasonable. UTEX has not opposed this language and it is consistent with the language approved for the CJP ICA in Docket No. 28821.</i></p> <p><i>(d) The Arbitrators find this issue does not ask for resolution of specific disputed contract language. The Arbitrators conclude that the language adopted for this ICA is consistent with the relevant sections of the FTA and FCC rules and decisions relating to intercarrier compensation.</i></p> <p><i>(e) The Arbitrators find this issue statement does not address any specific contract language. The intercarrier compensation for various types of traffic that are in dispute is addressed in other DPL issues.</i></p> <p><i>(f) The issue statement refers to transit obligations under the Act but does not mention any specific section of the Act. The transit obligations for both parties are addressed in the text of the Award in the section titled “Transit Services.”</i></p> <p><i>(g) and (h) These issue statements do not address any specific disputed contract language. The intercarrier compensation provisions for various types of traffic exchanged between UTEX and AT&amp;T Texas, to the extent they are disputed, are addressed in other DPL issues.</i></p> <p><i>(i) The issue of whether call flow diagrams should be incorporated into the ICA is addressed in DPL issues UTEX-31 and UTEX-33.</i></p>		



Issue #	Issue Statement	Attachment & Sections	Arbitrators’ Decision	UTEX’ EXCEPTION	AT&T TEXAS’ RESPONSE TO UTEX’S EXCEPTION
AT&T NIM 6 - 3	<p>(a) What is the appropriate form of intercarrier compensation for FX and FX-like traffic including ISP FX Traffic?</p> <p>(b) How should FX and FX-like traffic be segregated and separately tracked for compensation purposes?</p>	NIM-6: Sections: 1.4.2 – 1.4.3.2	<p><i>(a)-(b) In light of the FCC’s conclusion in the Core Mandamus Order that FTA § 251(b)(5) is not limited only to the transport and termination of certain types of traffic, such as local traffic (In the Matter of Intercarrier Compensation for ISP-Bound Traffic, CC Docket 99-68, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking ¶ 8 24 FCC Rcd. 6475 (rel. Nov. 5, 2008)), the Arbitrators conclude that FX traffic is encompassed by section 251(b)(5). However, the Arbitrators find that the FCC rules do not require the various types of §251(b)(5) traffic to be subject to the same compensation rate, and therefore the compensation for FX traffic need not mirror the compensation for local traffic.</i></p> <p><i>The Arbitrators note that in Docket Nos. 24015 and 28821, the Commission found that bill and keep is the appropriate method for intercarrier compensation for ISP-Bound FX traffic and voice FX traffic. (Consolidated Complaints and Requests for Post-Interconnection Dispute Resolution regarding Intercarrier Compensation for “FX-TYPE” Traffic against Southwestern Bell Telephone Company, Docket No.. 24015, Order on Clarification at 2, (January 4, 2005); Arbitration of Non-Costing Issues for Successor Interconnection Agreements to the Texas 271 Agreement, Docket No. 28821, Arbitration Award – Track I Issues at 26, (February 22, 2005)). Consistent with the Commission’s decisions in Docket Nos. 24015 and 28821, the Arbitrators conclude that ISP-Bound FX traffic and voice FX traffic will be subject to the “bill and keep” compensation method.</i></p>	<p><i>IMPLEMENTATION Exception:</i></p> <p><i>UTEX has drafted contract language consistent with the PFA as Exhibit A NIM Rider and proposes inclusion of this language to implement the Award as discussed in the PFA.</i></p> <p><i>UTEX has also incorporated all NIM and NIM related decisions into Exhibit D to highlight the inconsistencies among and between the specific decisions, especially when compared to the PFA award itself for the threshold issues.</i></p> <p><i>UTEX will not object to this specific award related to implementation if it is made clear that this award does not conflict with the PFA Award. UTEX proposes inclusion of the following language on all NIM and ITR and Numbering Appendices to ensure that the threshold decisions in the PFA are followed through contract implementation:</i></p> <p><i>“The terms of this Attachment are inferior to the terms of the Network Interconnection Methods Rider. In the event there is a conflict between any terms in this Attachment and any other Attachment or Appendix, or to any provision of the Network Interconnection Methods Rider, the Network Interconnection Rider will control. This Attachment and the Network Interconnection Methods Rider were not the result of negotiation under § 252(a) but were instead the result of an arbitration under § 252(b). Therefore, any interpretation must be fully consistent with the standards in the Act and FCC rules.”</i></p> <p><i>LEGAL Exception:</i></p>	See AT&T Texas’ Response to UTEX’s Exceptions in AT&T NIM 6-1.

Issue #	Issue Statement	Attachment & Sections	Arbitrators’ Decision	UTEX’ EXCEPTION	AT&T TEXAS’ RESPONSE TO UTEX’S EXCEPTION
			<i>The Arbitrators adopt the contract language pertaining to FX traffic contained in § 1.3.1 through § 1.3.3 and the language regarding segregating and tracking FX traffic in §9.0 including §9.1 through §9.3.1 of Attachment 12: Compensation in the CLEC Coalition ICA approved in Docket No. 28821. The Arbitrators find that AT&amp;T’s proposed language is not substantially the same as the language in the CLEC Coalition ICA. For example, AT&amp;T Texas’s proposed language does not include a description of the two types of FX services (Dedicated FX and Virtual Foreign Exchange (FX)) offered by LECs that appear in the CLEC Coalition. The Arbitrators, therefore, decline to adopt AT&amp;T Texas’s proposed language in §§1.4.2 – 1.4.3.2 and instead adopt language approved by the Commission for the CLEC Coalition ICA for this issue. The Arbitrators note that the CLEC Coalition ICA language in § 1.3 applies “bill and keep” compensation to all FX traffic.</i>	Please See UTEX Issue objections 2-11, 13, 15 and 40 with respect to any requirement for an FX customer to have a geographic number for their service as this is unlawful discrimination.	
AT&T NIM 6 - 4	<p>(a) When should the Parties’ obligation to pay Inter-carrier Compensation to each other commence?</p> <p>(b) Is it appropriate to require CLECs to demonstrate that Section 251(b)(5) Traffic and ISP-Bound Traffic is roughly balanced with the ILEC’s</p>	NIM-6 : Sections : 1.3, 1.4 1.5 -1.5.3 1.6 -1.6.3 1.7 -1.7.5, 1.7.6, 1.8 -1.8.4	<i>(a) The Arbitrators conclude that in cases where UTEX and AT&amp;T Texas are already exchanging traffic and the inter-carrier compensation arrangements for such traffic remain the same or do not require any system changes as a result of this arbitration, the new inter-carrier compensation arrangement will commence on the date this ICA becomes effective. The Arbitrators conclude that it is reasonable for the Parties’ obligation to pay inter-carrier compensation to commence when the first commercial call is terminated in Texas between the two parties in the following situations: (1) where the Parties are already exchanging traffic but the terms of this ICA will require systems modifications, (2) where the Parties are already</i>	<p><i>IMPLEMENTATION Exception:</i></p> <p><i>UTEX has drafted contract language consistent with the PFA as Exhibit A NIM Rider and proposes inclusion of this language to implement the Award as discussed in the PFA.</i></p> <p><i>UTEX will not object to this specific award related to implementation if it is made clear that UTEX’s implementation of this section in its Attachment A is proper and controls.</i></p> <p><i>UTEX has also incorporated all NIM and NIM related decisions into Exhibit D to highlight the inconsistencies among and between the specific</i></p>	See AT&T Texas’ Response to UTEX’s Exceptions in AT&T NIM 6-1.

Issue #	Issue Statement	Attachment & Sections	Arbitrators’ Decision	UTEX’ EXCEPTION	AT&T TEXAS’ RESPONSE TO UTEX’S EXCEPTION
	<p>traffic to obtain and maintain a Bill and Keep arrangement?</p> <p>(c) In order to obtain and maintain a Bill and Keep arrangement, is it appropriate to establish specific thresholds to be used to determine if Section 251(b)(5) Traffic and ISP-Bound Traffic exchanged between the Parties is roughly balanced?</p>		<p><i>exchanging traffic but the traffic types on an existing trunk between AT&amp;T Texas and UTEX will change as a result of this ICA, and (3) where the Parties are not currently exchanging traffic in a given local calling area.</i></p> <p><i>The Arbitrators find UTEX’s proposal to impose intercarrier compensation obligations on the Parties for all types of traffic when the ICA becomes effective to be inappropriate because it could result in the Parties applying intercarrier compensation on test calls exchanged by the Parties. Furthermore, the CLEC Coalition and CJP ICAs approved in Docket No. 28821 also require intercarrier obligations to commence when the first <u>commercial</u> call is terminated in the event the CLEC and AT&amp;T Texas have not previously exchanged traffic.</i></p> <p><i>The Arbitrators adopt the following language to replace §1.3:</i></p> <p><i>“1.3.1 Where there is preexisting traffic exchanged between the Parties, if this agreement does not change the intercarrier compensation arrangements or changes the intercarrier compensation arrangements without requiring system modifications, the applicable intercarrier compensation arrangement under this agreement will commence for such traffic on the date this agreement becomes effective.</i></p> <p><i>1.3.2 If the traffic types on an existing trunk in Texas between AT&amp;T Texas and CLEC are changed as a result of this agreement or the</i></p>	<p><i>decisions, including inconsistencies on this issue. UTEX proposes including the following language on each of these sections.</i></p> <p>“The terms of this Attachment are inferior to the terms of the Network Interconnection Methods Rider. In the event there is a conflict between any terms in this Attachment and any other Attachment or Appendix, or to any provision of the Network Interconnection Methods Rider, the Network Interconnection Rider will control. This Attachment and the Network Interconnection Methods Rider were not the result of negotiation under § 252(a) but were instead the result of an arbitration under § 252(b). Therefore, any interpretation must be fully consistent with the standards in the Act and FCC rules.”</p>	

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			<p><i>changes in the intercarrier compensation arrangements as a result of this agreement require system modifications, the applicable intercarrier compensation obligations pursuant to this Appendix Intercarrier Compensation will commence for such traffic upon the date the first commercial call is terminated pursuant to this agreement between the Parties on such trunks. The Parties will notify each other of the date when the first commercial call of a type of call covered by this Section is terminated after the change has been effectuated. The Parties agree that test traffic is not subject to compensation pursuant to this Appendix Intercarrier Compensation.</i></p> <p><i>1.3.3 If the Parties are not currently exchanging traffic in a given LATA or Local Calling Area, the intercarrier compensation obligations pursuant to this Appendix Intercarrier Compensation will commence for such traffic upon the date the first commercial call is terminated between the Parties in such LATA or Local Calling Area. The Parties will notify each other of the date when the first commercial call of a type of call covered by this Section is terminated. The Parties agree that test traffic is not subject to compensation pursuant to this Appendix Intercarrier Compensation.”</i></p> <p><i>(b)&amp;(c) Consistent with the Commission’s decision in Docket No. 28821 under Intercarrier Compensation DPL Issue SBC-34, the Arbitrators conclude that it is appropriate to require the traffic exchanged under the Long-Term Bill and Keep</i></p>		

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			<p>option be “roughly” in balance and find that the traffic is out-of-balance if the amount of traffic exchanged between the parties exceeds +/-5% away from equilibrium for three consecutive months. (Docket No. 28821, Arbitration Award – Track 1 Issues, Inter-carrier Compensation – JT DPL – Final, DPL Issue SBC-34 at page 51 of 84 (February 22, 2005)). The Arbitrators also conclude that if the traffic becomes out-of-balance, the FCC ISP compensation rate of \$0.0007 per minute of use should be applied for the remainder of the term, because to continue to reevaluate the traffic balance would be administratively burdensome. The Arbitrators therefore decline to adopt UTEX’s proposed language in § 1.4.</p> <p>The Arbitrators find the three options for inter-carrier compensation for local traffic (referenced as 251(b)(5) traffic in AT&amp;T’s proposed language) and ISP-bound traffic listed in AT&amp;T Texas’s proposed language in §§ 1.5-1.5.3 to be consistent with the options offered in the CLEC Coalition and CJP ICAs approved by the Commission in Docket No. 28821. These three options are: Option 1 – Exchange All ISP-Bound Traffic and Section 251(b)(5) Traffic at the FCC’s Interim ISP Terminating Compensation Plan Rate; Option 2 – A long term Bill and Keep arrangement for the transport and termination of Section 251(b)(5) Traffic and ISP-Bound Traffic; and Option 3 – Exchange Section 251(b)(5) Traffic at the specific rates, terms, and conditions established by the Commission for such traffic and ISP-Bound Traffic at the FCC’s Interim ISP terminating Compensation Plan rate of \$0.0007</p>		

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			<p><i>per minute of use. The Arbitrators find these three options to be reasonable because UTEX can select the option that it prefers, and Option 1 permits exchange of ISP Bound Traffic and local traffic at the FCC’s Interim ISP terminating Compensation Plan rate of \$.0007 per minute of use, as required by the FCC. For the reasons delineated in AT&amp;T NIM 6–3 and AT&amp;T NIM 6-12, the Arbitrators find that FX Traffic and Optional EAS are not subject to the same reciprocal compensation rates as local traffic.</i></p> <p><i>The Arbitrators note that AT&amp;T Texas’s proposed language in §§ 1.5-1.5.3, 1.6-.6.1.3, 1.7-1.7.5, and 1.8-1.8.4 is similar to the language in the CJP and CLEC Coalition ICAs approved in Docket No. 28821 and is therefore adopted with the following modifications.</i></p> <p><i>For the reasons discussed in AT&amp;T NIM 6-1, all references to “251(b)(5) Traffic” shall be replaced by “local traffic.” In § 1.5.2 relating to Option 2 (long-term Bill and Keep arrangement), the following sentence should be inserted:</i></p> <p><i>“‘Bill and Keep’ is an arrangement in which neither of the Parties charges the other Party for terminating traffic that originates on the other Party’s network; instead, each Party recovers from its end-users the cost of both originating traffic that it delivers to the other Party and terminating traffic that it receives from the other Party.”</i></p> <p><i>As stated above, the Arbitrators adopt §§ 1.6-1.6.1.3, which address the rates, terms, and conditions for Option 1 (under which the parties</i></p>		

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			<p>exchange ISP-Bound Traffic and local traffic at the FCC’s Interim ISP terminating compensation plan rate of \$0.0007 per minute of use). The Arbitrators note that the language in § 1.6.2, addressing the ISP-Bound Traffic rebuttable presumption for Option 1, also appears in § 1.8.2 under Option 3. However, this provision appears in the CLEC Coalition and the CJP ICAs under only Option 3, and the Arbitrators therefore decline to adopt the ISP-Bound Traffic rebuttable presumption in § 1.6.2 for Option 1. The Arbitrators also modify AT&amp;T Texas’s proposed language in § 1.6.3 relating to Billable Traffic to make it consistent with the language approved in Docket No. 28821 for the CJP ICA as follows:</p> <p>“For purposes of this Section 1.6, all <del>Section 251(b)(5) Local Traffic</del> and all ISP-Bound Traffic shall be referred to as “Billable Traffic” and will be billed in accordance with Section <del>11.0</del> <u>7.0</u> below. <del>The Party that transport and terminates more “Billable Traffic” (“Out of Balance Carrier”) will, on a monthly basis, calculate (i) the amount of such traffic to be compensated at the FCC’s interim ISP terminating compensation rate set forth in Section 1.6.1.2. The Out of Balance Carrier will invoice on a monthly basis the other Party in accordance with the provisions in this Agreement and the FCC’s interim ISP terminating compensation plan.”</del></p> <p>The Arbitrators also direct the parties to include the following language, which appears in the CJP agreement:</p> <p>“Each Party will invoice the other Party on a monthly basis for combined Section 251(b)(5)</p>		

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			<p><i>Traffic and ISP-Bound Traffic exchanged between the Parties at the rate set forth in Section 1.6.1.2 above.”</i></p> <p><i>With respect to § 1.7-1.7.5 relating to Long-Term Bill and Keep option (Option 2), the Arbitrators find AT&amp;T Texas’s proposed language to be substantially the same as the language approved for the CJP and CLEC Coalition ICAs in Docket No. 28821. The Arbitrators therefore adopt AT&amp;T’s proposed language § 1.7-1.7.5 with the following modifications:</i></p> <p><i>The first sentence in the full paragraph in §1.7 should refer to Option 3 as one of the alternatives to Long-Term Bill and Keep option. In addition, § 1.7 should include “IntraLATA interexchange Traffic” in the list of types of traffic not subject to Long –Term Local Bill and Keep option. The Arbitrators note that the last sentence in § 1.7.4.2 contains incorrect references to the provisions on the reciprocal compensation rates that would apply retroactively in the event that dispute resolution results in the calculations on the balance of traffic exchanged between the parties. The Arbitrators therefore find that the references to Sections 1.7.4 and 1.7.5 should be replaced with references to “Section 1.7.1 and 1.7.2.” Section 1.7.1 applies Bill and Keep if the traffic is in balance within +/- 5% of equilibrium (50%) and § 1.7.2 applies the compensation rate under Option 1 (i.e. \$0.0007 per minute of use) if the traffic is determined to be out-of-balance for three consecutive months.</i></p> <p><i>The Arbitrators also adopt AT&amp;T Texas’s proposed language in § 1.7.6 relating to audits on long-term</i></p>		



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			<p><i>bill and keep traffic and add the following language approved for long-term bill and keep arrangements in Docket No. 28821 for the CLEC Coalition and CJP ICAs:</i></p> <p><i>“1.7.7 The Parties will consult and negotiate in good faith to resolve any issues of accuracy or integrity of data collected, generated, or reported in connection with audits or otherwise.</i></p> <p><i>1.7.8 The audit provisions set out in Sections 1.7.5 through 1.7.6 above do not alter or affect audit provisions set out elsewhere in this Agreement.”</i></p> <p><i>Sections 1.8 – 1.8.4 set forth the provisions that apply Commission-established rates to Section 251(b)(5) Traffic and the FCC’s Interim ISP Terminating Compensation Plan rate for ISP-Bound Traffic (Option 3). The Arbitrators note that AT&amp;T Texas’s proposed language is substantially similar to the language approved in Docket No. 28821 for the CLEC Coalition and CJP ICAs. The Arbitrators adopt AT&amp;T Texas’s proposed language for §§ 1.8-1.8.4 with the following modification. Section 1.8 contains incorrect references to “Sections 1.6.1 through 1.6.4;” these references should be replaced with “Sections 1.8.1 through 1.8.4.”</i></p>		
AT&T NIM 6 - 5	AT&T: (a) Should each party be responsible for sending the CPN for traffic that originates on its respective network and for passing on the CPN	NIM 6: Sections 2.0 – 2.4, 7.5	<p><i>The Arbitrators address the delivery of CPN and trunking associated with ESP traffic in the text of the Award in the section titled “Intercarrier Compensation for Traffic Involving UTEX’s ESP Customers.”</i></p> <p><i>(a) and (d) The Arbitrators conclude that the parties should provide the Calling Party Number (CPN) information, where technically available to the</i></p>	<p><i>Please see UTEX Exceptions to PFA Sections: 6, 7.4.1, 7.5, 7.6, 7.7, and 7.8.</i></p> <p><i>Additionally UTEX observes that the prescribed language refers to “IP traffic” in the § 2.1 from the CLEC Coalition ICA prescribed on page 210. But on page 230 (NIM-6-15) that Arbitrators ban that</i></p>	The Arbitrators’ have correctly required the parties to provide CPN on calls. See AT&T Response Brief at pp. 27-31 (addressing UTEX’s Exceptions to CPN rulings).

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	<p>it receives from a third party?</p> <p>AT&amp;T: (b) How should the Parties be compensated for traffic that is passed without CPN?</p> <p>AT&amp;T: (c) Should a Party use commercially reasonable effort to prohibit the use of its local exchange services for the purpose of delivering interexchange traffic?</p> <p>UTEX: (d) Can AT&amp;T require all New Technology traffic and users to have a traditional number even when the technology does not require or need the number?</p>		<p><i>transmitting party. The Arbitrators note that the FCC and the Commission have recognized the importance of CPN as a rating tool so that calls are properly jurisdictionalized and billed the appropriate compensation rates. In addressing the use of CPN for purposes of billing for calling card traffic, the FCC concluded that CPN should be used to ensure accuracy in billing because “this approach balances the need for accurate intercarrier billing records with the need for some carriers to use CN [Charge Number] for their own retail billing purposes.” (Regulation of Prepaid Calling Card Services, WC Docket No. 05-68, Declaratory Ruling and Report and Order at ¶¶ 33 and 34 (June 30, 2006)). The Arbitrators also note that the Commission found in Docket No. 33323 that the CPN provides telecommunications providers with a geographic origination point associated with the call so the terminating and transiting providers can determine the jurisdiction of the call and apply the appropriate compensation rates and bill for the call. (Docket No. 33323, Arbitration Award at 80 (June 1, 2009)).</i></p> <p><i>AT&amp;T Texas’s proposed language in § 2.1 requires each party to provide Calling Party Number (CPN) as defined in 47 C.F.R. §64.1600(c), which is the FCC’s definition of CPN. That rule states, “The term ‘Calling Party Number’ refers to the subscriber line number or the directory number contained in the calling party number parameter of the call set-up message associated with an interstate call on a Signaling System 7 network.” The Arbitrators note that in Docket No. 33323, the Commission found that the FCC’s definition of CPN refers to a telephone number as specified in the North American Numbering Plan (NANP) numbering scheme where a telephone</i></p>	<p><i>reference on sub-issue (b). UTEX requests that the PFD Matrix be made consistent on this issue.</i></p>	

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			<p><i>number consists of ten-digits represented by the format: NPA-NXX-NXXX. (Docket No. 33323, Arbitration Award at 78-80 (June 1, 2009)). Consistent with the Commission’s decision in Docket No. 33323, the Arbitrators find that a valid CPN is the actual telephone number of the calling party (a NANP ten-digit number) listed in the Local Exchange Routing Guide (LERG).</i></p> <p><i>The Arbitrators recognize that CPN delivered by the transmitting party may not always represent the true geographic location of the customer and the CPN representation by UTEX’s customers may not fit the traditional CPN parameters. The Arbitrators note that use of CPN for billing purposes is standard practice within the industry and while not perfect, provides the best information available for billing purposes as asserted by AT&amp;T Texas. (Hearing on Merits Tr. at 309:19-310:6). Furthermore, with respect to traffic from VOIP end users that terminate on AT&amp;T Texas’s network, it is necessary for the VOIP end user to be assigned a telephone number that has CPN in order for the VOIP end user to receive calls from AT&amp;T Texas’s customers. The Arbitrators also note that in Docket No. 28821, Intercarrier Compensation DPL SBC-26, while the Commission declined to address the routing or intercarrier compensation for VOIP traffic, it found that the information on the physical location of the end user on the originating end of the call will help the carriers to properly identify the jurisdiction of the call. (Docket No. 28821, Arbitration Award – Track 1I Issues, Master DPL Between SBC and AT&amp;T, MCI, CG, CJP and Birch/Ionex, Intercarrier Compensation, DPL Issue SBC-26 at page 5 (June 17, 2005)).</i></p>		

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			<p><i>The Commission in that docket adopted language that requires parties to provide the original and true CPN for IP traffic along with other types of traffic. The Arbitrators conclude that the concerns raised by UTEX do not justify abandoning the current industry practice of using CPN as a means for jurisdictionalizing and billing of calls. For the reasons described above, the Arbitrators decline to adopt the other rating tools proposed by UTEX in §§ 2.2 and 7.4 of its Exhibit 3, (i.e. ANI, Charge Number, and ESP Customer Voice Identification Information).</i></p> <p><i>(b) With respect to compensation for traffic without CPN, the Arbitrators note that AT&amp;T’s proposal is consistent with the Commission’s decision in Docket Nos. 21982 and 28821. In response to Inter-carrier Compensation Issue SBC-23 in Docket No. 28821, the Commission affirmed its prior decisions and found that if the percentage of calls passed with CPN is greater than 90 percent, then all calls exchanged without CPN information will be billed as either local traffic or intraLATA toll traffic in direct proportion to the MOUs of calls exchanged with CPN information. However, if the percentage of calls passed with CPN is less than 90 percent, all calls passed without CPN will be billed as intraLATA toll traffic. (Docket No. 28821, Arbitration Award – Track 1 Issues, Inter-carrier Compensation –JT DPL – Final, DPL Issue SBC-23 at page 41 of 84 (February 22, 2005)). The Commission in Docket No. 28821 concluded that the 90/10 CPN requirement would serve as an incentive to parties to continue to send CPN information for their inter-carrier calls and minimize any potential for arbitrage. The Arbitrators find that UTEX’s proposed threshold of 60% traffic</i></p>		

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			<p><i>with CPN, in § 7.5 of Attachment 6 to NIM: Intercarrier Compensation would allow for 40% of its traffic to be passed unidentified and would fail to provide the necessary incentive for parties to send CPN information in calls and fail to sufficiently minimize the potential for arbitrage. UTEX’s proposal also is silent about the remedy when the percentage of traffic passed with CPN falls below 60%. The Arbitrators note that UTEX has proposed different terms in § 7.4 in “Exhibit 3 – Compensation Terms for mutual exchange of SS7 traffic.” Those terms do not address the remedy if the percentage of traffic without CPN falls between 60% and 90%. The Arbitrators find that UTEX has not provided support for its proposal in § 7.4 in “Exhibit 3 – Compensation Terms for mutual exchange of SS7 traffic,” to subject traffic without CPN, to a rate that is double the terminating Party’s compensation rate (namely, \$0.0014), if the percentage of calls passed with CPN is less than 60%. Furthermore, UTEX’s proposal would not provide the incentive needed for parties to continue to send CPN information for intercarrier calls and minimize the potential for arbitrage. The Arbitrators therefore decline to adopt UTEX’s proposal in §7.5 of Attachment 6 to NIM: Intercarrier Compensation or in § 7.4 in “Exhibit 3 – Compensation Terms for mutual exchange of SS7 traffic.”</i></p> <p><i>(c) The trunking for ESP traffic is addressed in the text of the Award in the section titled “Intercarrier Compensation for Traffic Involving UTEX’s ESP Customers.” The Arbitrators conclude that it is appropriate to include language in the ICA that would prohibit the use of local exchange trunks to deliver interexchange traffic in all other cases.</i></p>		

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			<p><i>The Arbitrators find that UTEX’s proposed language and AT&amp;T Texas’s proposed language for §§ 2.0- 2.2 are fairly similar to the language approved by the Commission in Docket No. 28821 for the CLEC Coalition ICA. However, the Arbitrators modify the parties’ proposed language for §§ 2.1-2.2 to make it consistent with the language in the CLEC Coalition ICA and the Arbitrators’ decision on intercarrier compensation for ESP traffic, as follows:</i></p> <p><i>“2.1 Each Party to this Agreement will be responsible for the accuracy and quality of its data as submitted to the respective Parties involved. For all traffic including, without limitation, <u>Interexchange Circuit-Switched Traffic, IP Traffic, ESP Traffic, Switched Access Traffic</u> and wireless traffic, each Party shall provide Calling Party Number (“CPN”) as defined in 47 C.F.R. § 64.1600(c) (“CPN”) in accordance with Section 2.3. In addition, each Party agrees that it shall not strip, alter, modify, add, delete, change, or incorrectly assign any CPN. <u>CPN shall, at a minimum, include information that accurately reflects the physical location of the end user that originated and/or dialed the call, when including such information is technically feasible.</u> If either party identifies improper, incorrect, or fraudulent use of local exchange services (including, but not limited to PRI, ISDN, and/or Smart Trunks), or identifies stripped, altered, modified, added, deleted, changed, and/or incorrectly assigned CPN, the Parties agree to cooperate with one another to investigate and take corrective action.</i></p> <p><i>2.2 Each Party will include in the information transmitted to the other for each call being</i></p>		

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			<p><i>terminated on the other’s network (where technically available to the transmitting party), the originating Calling Party Number (CPN)."</i></p> <p><i>The Arbitrators adopt AT&amp;T Texas’s proposed language in § 2.3 because it reflects the Commission’s decision in Docket Nos. 21982 and 28821 regarding the 90/10 CPN rule. However, the reference to § 251(b)(5) should be replaced with “local” traffic for reasons delineated under DPL issue AT&amp;T NIM 6-1. Finally, the Arbitrators adopt AT&amp;T Texas’s proposed language for § 2.4 because it is essentially the language approved by the Commission in Docket No. 28821 for the CLEC Coalition.</i></p>		
AT&T NIM 6 - 6	<p>(a) What are the proper rates for transport and termination of §251(b)(5) traffic?</p> <p>(b) Is UTEX entitled to the tandem interconnection rate?</p>	NIM-6 : Sections 3.0 – 3.6.6	<p><i>The Arbitrators note that the disputed language submitted for resolution appears to include §§ 3.4 through 3.4.1.2. However, the contract language in § 3.4 through 3.4.1.2 is addressed in DPL issue NIM 6-7 below.</i></p> <p><i>(a) The rates for transport and termination of § 251(b)(5) traffic in § 3.0 would apply if UTEX chooses Option 3. The Commission determined in Docket No. 28821 under Intercarrier Compensation DPL Issue SBC 64 that the bifurcated end office rate continues to be the most accurate measurement for determining the costs incurred by each Party’s end office call termination function. (Docket No. 28821, Arbitration Award – Track 1 Issue, Intercarrier Compensation – JT DPL – Final, DPL Issue SBC-64 at pages 80-81 of 84 (February 22, 2005)). The Arbitrators find that the rates proposed by AT&amp;T Texas for end office switching, tandem switching, and transport reflect the rates established by the Commission in Docket No. 21982 and approved by the Commission in Docket</i></p>	<p><i>The Arbitrators’ decision refers to “251(b)(5) traffic, which is inconsistent with the direction to refer to “local traffic.”</i></p> <p><i>IMPLEMENTATION Exception</i></p> <p><i>UTEX has drafted contract language consistent with the PFA as Exhibit A NIM Rider and proposes inclusion of this language to implement the Award as discussed in the PFA.</i></p> <p><i>UTEX will not object to this specific award related to implementation if it is made clear that UTEX’s implementation of this section in its Attachment A is proper and controls.</i></p> <p><i>UTEX has also incorporated all NIM and NIM related decisions into Exhibit D to highlight the inconsistencies among and between the specific decisions, including inconsistencies on this issue. UTEX proposes including the following language on each of these</i></p>	See AT&T Texas’ Response to UTEX’s Exceptions in AT&T NIM 6-1.

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			<p>No. 28821 for the CLEC Coalition and CJP ICAs. The Arbitrators, therefore, adopt AT&amp;T Texas’s proposed language in §§ 3.0-3.3.1.3.2 with modifications. All references to “§251(b)(5) Traffic” should be replaced with “Local Traffic” for reasons stated under DPL Issue AT&amp;T NIM 6-1 above. Furthermore, the incorrect reference to Option 1 in § 3.1 should be replaced with Option 3.</p> <p>(b) In Docket No. 28821 under Intercarrier Compensation DPL Issue SBC 15, the Commission affirmed its previous adoption of blended transport rates in Docket No. 21982. (Docket No. 28821, Arbitration Award – Track 1 Issues, Intercarrier Compensation – JT DPL – Final, DPL Issue SBC-15 at page 13 of 84 (February 22, 2005)). Consequently, the Arbitrators conclude that the blended transport rates proposed by AT&amp;T Texas adequately compensate UTEX for tandem switching when it employs a multi-function switch. UTEX has not provided adequate explanation for its proposed language in §§ 3.3.2-3.4 or its proposed rates in § 3.5, and therefore UTEX’s proposed language is not adopted. AT&amp;T Texas’s proposed language in §§ 3.5-3.6.6 reflects the Commission’s decisions in Docket Nos. 28821 and 21982 regarding the appropriate reciprocal compensation for both local traffic terminated by a Party using a multi-function switch network and for local traffic terminated not using a multi-function switch. The Arbitrators, therefore, adopt AT&amp;T Texas’s proposed language in §§ 3.5-3.6.6, which is substantially similar to the language approved in Docket No. 28821 for the CJP ICA. However, the Arbitrators conclude that all references to “§251(b)(5) Traffic” should be replaced with “Local Traffic” for the reasons stated under DPL issue AT&amp;T NIM 6-1</p>	<p>sections.</p> <p>“The terms of this Attachment are inferior to the terms of the Network Interconnection Methods Rider. In the event there is a conflict between any terms in this Attachment and any other Attachment or Appendix, or to any provision of the Network Interconnection Methods Rider, The Network Interconnection Rider will control. This Attachment and the Network Interconnection Methods Rider were not the result of negotiation under § 252(a) but were instead the result of an arbitration under § 252(b). Therefore, any interpretation must be fully consistent with the standards in the Act and FCC rules.”</p>	



Issue #	Issue Statement	Attachment & Sections	Arbitrators’ Decision	UTEX’ EXCEPTION	AT&T TEXAS’ RESPONSE TO UTEX’S EXCEPTION
			<i>above. Furthermore, the incorrect reference to § 3.3.4 in § 3.5.2 should be replaced with §3.3.1.3.</i>		
AT&T NIM 6 - 8	<p>(a) Is it appropriate to include language for other telecommunications traffic that could be traded outside of a local calling scope?</p> <p>(b) What is the appropriate form of intercarrier compensation for IntraLATA Interexchange traffic?</p>	NIM-6: Section: 3.7, 3.7.1-3.7.3	<p><i>(a) Consistent with the Commission’s decision in Docket No. 28821 under Intercarrier Compensation DPL Issue SBC-17, the Arbitrators conclude that in order to maintain contractual completeness and to avoid compensation disputes, it is appropriate to include language in the ICA that addresses compensation for various types of traffic that may be exchanged between the parties, which AT&amp;T Texas’s proposed language does. (Docket No. 28821, Arbitration Award – Track 1 Issues, Intercarrier Compensation – JT DPL – Final, DPL Issue SBC-17 at pages 23-24 of 84 (February 22, 2005)). The Arbitrators note that the compensation rates established by the Commission for the different types of traffic exchanged between LECs vary, depending on the nature of the traffic, the costs of transporting and terminating the traffic, and other relevant policy and regulatory considerations. The Arbitrators note that AT&amp;T Texas’s proposed language is substantially similar to the language approved for the CJP ICA in Docket No. 28821. The Arbitrators adopt AT&amp;T Texas’s proposed language in §§3.7 and 3.7.1-3.7.2 with the following modification: “Transit traffic” should be added to the list of non-local traffic in §3.7.1.</i></p> <p><i>The Arbitrators decline to adopt AT&amp;T Texas’s proposed language in §3.7.3, which states that the parties agree that physical interconnection, routing, and trunking of ISP calls on an inter-exchange basis, either IntraLATA or InterLATA, shall be as specified in the Agreement for all other traffic exchanged including, but not limited to, the need to route over Meet Point Billed Trunks. The Arbitrators conclude that including language on physical interconnection,</i></p>	<p><i>IMPLEMENTATION Exception:</i></p> <p><i>UTEX has drafted contract language consistent with the PFA as Exhibit A NIM Rider and Proposes inclusion of this language to implement the Award as discussed in the PFA.</i></p> <p><i>UTEX will not object to this specific award related to implementation if it is made clear that UTEX’s implementation of this section in its Attachment A is proper and controls.</i></p> <p><i>UTEX has also incorporated all NIM and NIM related decisions into Exhibit D to highlight the inconsistencies among and between the specific decisions, including inconsistencies on this issue. UTEX proposes including the following language on each of these sections.</i></p> <p><i>“The terms of this Attachment are inferior to the terms of the Network Interconnection Methods Rider. In the event there is a conflict between any terms in this Attachment and any other Attachment or Appendix, or to any provision of the Network Interconnection Methods Rider, The Network Interconnection Rider will control. This Attachment and the Network Interconnection Methods Rider were not the result of negotiation under § 252(a) but were instead the result of an arbitration under § 252(b). Therefore, any interpretation must be fully consistent with the standards in the Act and FCC rules.”</i></p>	See AT&T Texas’ Response to UTEX’s Exceptions in AT&T NIM 6-1.

Issue #	Issue Statement	Attachment & Sections	Arbitrators’ Decision	UTEX’ EXCEPTION	AT&T TEXAS’ RESPONSE TO UTEX’S EXCEPTION
			<p><i>routing, and trunking of certain types of ISP calls in the Appendix on Inter-carrier Compensation is unnecessary given that the physical interconnection, routing, and trunking of all types of traffic exchanged between the Parties, including ISP calls, is addressed elsewhere in the Agreement.</i></p> <p><i>(b) The issue of the appropriate form of inter-carrier compensation for IntraLATA Interexchange traffic is addressed under DPL issue AT&amp;T NIM 6-10.</i></p>		
AT&T NIM 6 - 9	Should non 251/252 services such as Transit Services be negotiated separately?	NIM-6: Sections: 4.0-4.6, 8.0-8.2	<p><i>This issue is addressed in the text of the Award in the section titled “Transit Services.”</i></p>	<p><b>IMPLEMENTATION Exception:</b></p> <p><i>UTEX has drafted contract language consistent with the PFA as Exhibit A NIM Rider and proposes inclusion of this language to implement the Award as discussed in the PFA.</i></p> <p><i>UTEX will not object to this specific award related to implementation if it is made clear that UTEX’s implementation of this section in its Attachment A is proper and controls.</i></p> <p><i>UTEX has also incorporated all NIM and NIM related decisions into Exhibit D to highlight the inconsistencies among and between the specific decisions, including inconsistencies on this issue. UTEX proposes including the following language on each of these sections.</i></p> <p>“The terms of this Attachment are inferior to the terms of the Network Interconnection Methods Rider. In the event there is a conflict between any terms in this Attachment and any other Attachment or Appendix, or to any provision of the Network Interconnection Methods Rider, the</p>	<p>See AT&amp;T Texas’ Response to UTEX’s Exceptions in AT&amp;T NIM 6-1.</p> <p>In addition, the Arbitrators properly found that (1) that language they approved properly addressed transit and (2) UTEX failed to propose any other language related to transit. See Response Brief at pp. 8-9 and 11 (addressing transit).</p>

Issue #	Issue Statement	Attachment & Sections	Arbitrators’ Decision	UTEX’ EXCEPTION	AT&T TEXAS’ RESPONSE TO UTEX’S EXCEPTION
				Network Interconnection Rider will control. This Attachment and the Network Interconnection Methods Rider were not the result of negotiation under § 252(a) but were instead the result of an arbitration under § 252(b). Therefore, any interpretation must be fully consistent with the standards in the Act and FCC rules.”	
AT&T NIM 6 - 10	What is the appropriate treatment and form of intercarrier compensation for IntraLATA Toll Traffic?	NIM-6: Sections: 5.0-5.2	<p><i>The Arbitrators find that the intercarrier compensation for IntraLATA toll traffic is access charges, which appears to be undisputed, judging by the ICA language submitted for § 5.2. The Arbitrators adopt AT&amp;T Texas’s proposed language for § 5.0 and § 5.2, with modifications. For reasons described in the text of the Award in the section titled “Intercarrier Compensation for Traffic Involving UTEX’s ESP Customers,” the Arbitrators modify the heading of § 5.0 to include InterLATA Interexchange Toll Traffic, specify that the section applies when a party to this ICA is an IXC, and add § 5.3 to address application of access charges for the termination of interLATA interexchange traffic. Furthermore, given that the compensation for other types of interexchange traffic originating and terminating within a LATA is addressed in other sections of Attachment 6 to NIM, the Arbitrators clarify in § 5.2 that the traffic at issue in this section is IntraLATA traffic not considered to be Local Traffic, ISP-Bound Traffic, ESP Traffic, Optional EAS traffic, FX Traffic, FGA Traffic, Meet Point Billing Traffic, or Cellular Traffic. The Arbitrators note that the language adopted for § 5.2 is similar to the language approved in Docket No. 28821 for the CJP ICA.</i></p> <p>“5.0 <del>Reciprocal</del> Compensation for</p>	<p><b>IMPLEMENTATION OBJECTION:</b></p> <p><i>UTEX has drafted contract language consistent with the PFA as Exhibit A NIM Rider and proposes inclusion of this language to implement the Award as discussed in the PFA.</i></p> <p><i>UTEX will not object to this specific award related to implementation if it is made clear that UTEX’s implementation of this section in its Attachment A is proper and controls.</i></p> <p><i>UTEX has also incorporated all NIM and NIM related decisions into Exhibit D to highlight the inconsistencies among and between the specific decisions, including inconsistencies on this issue. UTEX proposes including the following language on each of these sections.</i></p> <p>The terms of this Attachment are inferior to the terms of the Network Interconnection Methods Rider. In the event there is a conflict between any terms in this Attachment and any other Attachment or Appendix, or to any provision of the Network Interconnection Methods Rider, the Network Interconnection Rider will control. This Attachment and the Network Interconnection Methods Rider</p>	See AT&T Texas’ Response to UTEX’s Exceptions in AT&T NIM 6-1.

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			<p><i>Termination of IntraLATA and InterLATA Interexchange Toll Traffic When a Party Is an IXC.</i></p> <p>5.2 For intrastate intraLATA interexchange <del>service</del> traffic, <u>not considered Local Traffic, ISP-Bound Traffic, ESP Traffic, Optional EAS Traffic, FX traffic, FGA Traffic, Meet Point Billing Traffic, or Cellular Traffic</u>, compensation for termination of this traffic will be at terminating access rates for Message Telephone Service (MTS) and originating access rates for 800 Service, including the Carrier Common Line (CCL) charge, as set forth in each Party’s intrastate access service tariff. For interstate intraLATA service, compensation for termination of this traffic will be at terminating access rates for MTS and originating access rates for 800 Service including the CCL charge, as set forth in each party’s interstate access service tariff.</p> <p><u>5.3 For interLATA interexchange traffic, compensation for termination of this traffic will be at access rates as set forth in each Party’s own applicable interstate or intrastate access tariffs.”</u></p> <p><i>The issue of intercarrier compensation for traffic to or from an ESP is addressed in the text of the Award in the section titled “Intercarrier Compensation for Traffic involving UTEX’s ESP customers.” For the reasons discussed there, the Arbitrators decline to adopt UTEX’s proposed language in § 5.2 of Exhibit 3 to</i></p>	<p>were not the result of negotiation under § 252(a) but were instead the result of an arbitration under § 252(b). Therefore, any interpretation must be fully consistent with the standards in the Act and FCC rules.”</p> <p>Legal Exception:</p> <p>Please See UTEX Exception to the PFA Section7.10.</p>	

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			<p><i>NIM for traffic to or from an ESP.</i></p> <p><i>The Arbitrators note that § 5.1 includes UTEX’s proposed language for Optional EAS traffic, which the Arbitrators declined to adopt under DPL issue AT&amp;T NIM 6-12.</i></p>		
AT&T NIM 6 - 11	<p>(a) Should this Agreement include terms and conditions for Meet Point Billing that are in accordance with the guidelines contained in the Ordering and Billing Forum’s MECOD and MECAB documents?</p> <p>(b) What are the appropriate compensation rates for the termination of MPB traffic?</p> <p>(c) Should out-dated references to IBC (Initial Billing Company) be removed from the Meet Point Billing arrangement provisions?</p> <p>(d) Where the Exchange Message</p>	NIM-6: Sections: 6.0 – 6.6	<p><i>(a)-(d) The Arbitrators find that Meet Point Billing arrangements apply to both parties, regardless of which party directly serves the IXC. Undisputed language in § 6.2 recognizes that interexchange carriers may be served via either party’s access tandem switch.</i></p> <p><i>The Commission in Docket No. 28821 adopted, under Inter-carrier Compensation Issue SBC-56, AT&amp;T Texas’s language (then SBC Texas’s) for the Birch Telecom/Ionex Communications ICA because it appeared to be consistent with current industry guidelines, as reflected in the Ordering and Billing Forum approved Multiple Exchange Carrier Access Billing (MECAB) guidelines. (Docket No. 28821, Arbitration Award – Track 1 Issues, Inter-carrier Compensation – JT DPL – Final, DPL Issue SBC-56 at pages 73-74 of 84 (February 22, 2005)). The Arbitrators note that the language for §§ 6.0-6.6 with AT&amp;T Texas’s proposed modifications is substantially similar to the language approved by the Commission in Docket No. 28821 for the Birch Telecom/Ionex Communications ICA. For reasons described below, the Arbitrators adopt AT&amp;T Texas’s proposed language for §§ 6.0-6.6, with modifications described below.</i></p> <p><i>For reasons described in the text of the Award in the section titled “Inter-carrier Compensation for traffic Involving UTEX’s ESP Customers,” the Arbitrators</i></p>	<p><i>IMPLEMENTATION Exception:</i></p> <p><i>UTEX has drafted contract language consistent with the PFA as Exhibit A NIM Rider and proposes inclusion of this language to implement the Award as discussed in the PFA.</i></p> <p><i>UTEX will not object to this specific award related to implementation if it is made clear that UTEX’s implementation of this section in its Attachment A is proper and controls.</i></p> <p><i>UTEX has also incorporated all NIM and NIM related decisions into Exhibit D to highlight the inconsistencies among and between the specific decisions, including inconsistencies on this issue. UTEX proposes including the following language on each of these sections.</i></p> <p><i>“The terms of this Attachment are inferior to the terms of the Network Interconnection Methods Rider. In the event there is a conflict between any terms in this Attachment and any other Attachment or Appendix, or to any provision of the Network Interconnection Methods Rider, the Network Interconnection Rider will control. This Attachment and the Network Interconnection Methods Rider were not the result of negotiation under § 252(a) but were instead the result of an arbitration under § 252(b). Therefore, any interpretation must be fully</i></p>	See AT&T Texas’ Response to UTEX’s Exceptions in AT&T NIM 6-1.

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	Interface (EMI) records cannot be transferred due to a transmission failure, should records be provided via a mutually acceptable medium.		<p>have modified the heading for § 6 to clarify that the provisions of the section apply to Third Party IXCs and added a new § 6.7 to address a situation where a third party IXC does not have a carrier identification code (CIC) assigned by NANPA or an access customer terminal location (ACTL) identifier. Also, the Arbitrators modify § 6.1 to include compensation for origination of intercompany traffic and indicate that the compensation is for intercompany Meet Point Billing Traffic. In addition, the Arbitrators adopt UTEX’s proposed language for §§ 6.1 and 6.2 because the language is consistent with the language approved in Docket No. 28821 for the CJP ICA.</p> <p>“6.0 Compensation for Origination and Termination of Switched Access Service Traffic to or from <del>a</del> <u>a Third-Party Interexchange Carrier (IXC)</u> (Meet-Point Billing (MPB) Arrangements).</p> <p>6.1 For interLATA traffic and intraLATA traffic, compensation for <u>origination or termination of intercompany Meet Point Billing</u> traffic will be at access rates as set forth in each Party’s own applicable interstate or intrastate access tariffs. When such traffic is contained in the Optional Calling Areas, compensation will be applied pursuant to <u>Section 8.0 below</u>.<del>5-0 above</del>.</p> <p><u>6.7 If an IXC interconnected to a Party does not have a CIC assigned by NANPA and an ACTL identifier, the</u></p>	consistent with the standards in the Act and FCC rules.”	

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			<p><u>other Party may bill the interconnecting Party instead of billing the IXC.”</u></p> <p>The Arbitrators note that § 6.3 contains undisputed language. The Arbitrators adopt the remaining sections, §§ 6.4-6.6, with AT&amp;T Texas’s proposed modifications because the language is substantially similar to the language approved by the Commission in Docket No. 28821 for the Birch Telecom/Ionex Communications ICA.</p> <p>The Arbitrators decline to qualify the terms “interexchange carriers” or “IXC” with the word “Legacy” as proposed by UTEX because the assessment of switched access charges on IXCs does not depend on whether an IXC is a “Legacy IXC.” Furthermore, the word “Legacy” does not appear in FTA § 251(g), which addresses the requirements for the continued provision of exchange access information access and exchange services for such access to interexchange carriers and information service providers.</p> <p>The issue of whether call flow diagrams should be incorporated into the ICA is addressed under DPL issues UTEX 31 and UTEX 33.</p>		
AT&T NIM 6 - 12	What is the appropriate form of intercarrier compensation for Optional EAS traffic?	NIM-6 : Sections 5-5.1, 6.1, 8.0 – 8.3	<p>The Arbitrators conclude that Optional EAS Traffic should be compensated using a transport and termination rate of \$0.002487 per minute of use (MOU) with no additives. The Arbitrators note that although UTEX’s position statement proposes a rate of \$0.0007 per MOU for Optional EAS traffic, its proposed language on Optional EAS traffic in §§ 5-5.1 reflects the same rate (\$0.002487 per</p>	<p>IMPLEMENTATION Exception 1:</p> <p>UTEX has drafted contract language consistent with the PFA as Exhibit A NIM Rider and proposes inclusion of this language to implement the Award as discussed in the PFA.</p> <p>UTEX will not object to this specific award related</p>	<p>See AT&amp;T Texas’ Response Brief at pp. 31 and 33 (addressing UTEX exceptions regarding Optional EAS).</p>

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			<p>MOU) as that proposed by AT&amp;T Texas and approved by the Commission in Docket No. 28821. The Arbitrators note that AT&amp;T Texas’s proposed language on Optional EAS traffic in §§ 8.0-8.2.1 is substantially similar to the language approved in Docket No. 28821 for the CLEC Coalition ICA. The Arbitrators, therefore, adopt AT&amp;T Texas’s proposed §§ 8.0-8.2.1.</p> <p>However, the Arbitrators decline to adopt AT&amp;T Texas’s proposed § 8.3, which requires the reciprocal payment of an additive. The Commission previously concluded in Docket No. 16630 that Optional EAS service is “telephone exchange service” under FTA § 153(47)(B) because Optional EAS service is comparable to local service. (Application of Lone Star Net, Inc. for Compulsory Arbitration to Establish an Interconnection Agreement Between Lone Star Net, Inc. and Southwestern Bell Telephone Co., Docket No. 16630, Arbitration Award at 5 (Mar. 7, 1997)). As a result of the Commission’s conclusion that Optional EAS is telephone exchange service, Optional EAS rates must comply with the reciprocal compensation provisions of the FTA and the FCC’s rules. In the Core Mandamus Order, the FCC concluded that “section 251(b)(5) is not limited to local traffic,” based in part on the fact that “Congress used the term ‘telecommunications,’ the broadest of the statute’s defined terms” when defining the types of traffic subject to that section. (In the Matter of Intercarrier Compensation for ISP-Bound Traffic, CC Docket 99-68, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking ¶¶ 7-8, 24 FCC Rcd. 6475 (rel. Nov.</p>	<p>to implementation if it is made clear that UTEX’s implementation of this section in its Attachment A is proper and controls.</p> <p>UTEX has also incorporated all NIM and NIM related decisions into Exhibit D to highlight the inconsistencies among and between the specific decisions, including inconsistencies on this issue. UTEX proposes including the following language on each of these sections.</p> <p>“The terms of this Attachment are inferior to the terms of the Network Interconnection Methods Rider. In the event there is a conflict between any terms in this Attachment and any other Attachment or Appendix, or to any provision of the Network Interconnection Methods Rider, the Network Interconnection Rider will control. This Attachment and the Network Interconnection Methods Rider were not the result of negotiation under § 252(a) but were instead the result of an arbitration under § 252(b). Therefore, any interpretation must be fully consistent with the standards in the Act and FCC rules.” Legal Exception:</p> <p>Please See UTEX Exceptions to the PFA Section 7.4.2</p> <p>Implementation Exception (2)</p> <p>If the AT&amp;T Tariff can apply and is reciprocal UTEX requests a workshop so that the parties can come to a mutual understanding on how UTEX could ever construct a service so that it receives an OEAS rate under 251(b)(5) interconnection.</p>	



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			<p>5, 2008) (Core Mandamus Order)). The FCC also recognized in the Core Mandamus Order, however, that FTA § 251(g) carved out certain types of traffic that would otherwise be subject to FTA § 251(b)(5). Core Mandamus Order ¶ 16. Specifically, FTA § 251(g) carves out “exchange access, information access, and exchange services for such access to interexchange carriers and information service providers” from the reciprocal compensation obligations of FTA § 251(b)(5). For traffic subject to the carve out, the pre-FTA rules applicable to that traffic continue to apply rather than the reciprocal compensation rules.</p> <p>Telephone exchange service is not a type of traffic carved out by FTA § 251(g). Consequently, because the Commission has found Optional EAS to be telephone exchange service, Optional EAS rates must comply with the reciprocal compensation provisions of the FTA and the FCC’s rules. The Optional EAS rates approved in the Docket No. 28821 ICAs include a transport and termination rate of \$0.002487 per MOU and a toll additive “paid by CLEC to SBC TEXAS . . . for toll-free calls made by a SBC TEXAS customer to CLEC’s optional 2-way EAS customer.” In Docket No. 16630, the Commission described this toll additive as a way to “replace a portion of either lost toll or lost access” that the ILEC would forgo by not charging its own customer toll charges for a call to a CLEC’s 2-way optional EAS customer. (Docket No. 16630, Arbitration Award at 8). The Arbitrators conclude that this toll additive is not consistent with the reciprocal compensation rules that apply to traffic, like Optional EAS Traffic, that</p>		

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			<p>is subject to FTA § 251(b)(5). Specifically, FCC Rule 51.703(b) states, “A LEC may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC’s network.” The additive for Optional EAS Traffic violates this rule because it requires the terminating LEC to compensate the originating LEC for the originating LEC’s lost toll or access charge revenue. In addition, the additive does not appear consistent with the FCC’s TELRIC pricing standard for reciprocal compensation because it is based not on the LEC’s cost but on replacement of lost revenue. FCC Rule 51.705(a)(1). For these reasons, the Arbitrators conclude that the additive should not be included in the ICA’s Optional EAS compensation provision.</p> <p>In its DPL position statement, UTEX asserts that Optional EAS service should be subject to the same \$0.0007 per MOU rate as Local Traffic. While the Arbitrators agree that FTA § 251(b)(5) applies to this traffic, nothing requires the rates for Local Traffic and Optional EAS Traffic to be the same. UTEX has not established that the cost-based rate previously approved by the Commission for Optional EAS Traffic service should be changed.</p> <p>In addition, the Arbitrators decline to adopt UTEX’s proposed language on Optional EAS traffic in §§ 5-5.1, which would allow UTEX to opt-in to the Optional EAS rates between AT&amp;T Texas and other ILECs. The Commission decided in Docket No. 28821 under Intercarrier Compensation DPL Issue SBC-4 that the FCC’s “all-or-nothing rule” requires a requesting carrier seeking to avail itself</p>		

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			<p><i>of terms in an ICA to adopt the agreement in its entirety, taking all rates, terms, and conditions from the adopted agreement. Allowing UTEX to opt into reciprocal compensation arrangements without also adopting all other terms of the ICA, as UTEX proposes, would conflict with the FCC’s “all-or-nothing rule.” (Docket No. 28821, Arbitration Award – Track 1 Issues, Intercarrier Compensation – JT DPL – Final, DPL Issue SBC-4 at pages 4-5 of 84 (February 22, 2005)).</i></p> <p><i>The Arbitrators note that UTEX’s proposed language includes a transit rate for Optional EAS. The appropriate transit rates for various types of traffic including Optional EAS traffic are addressed under DPL issue AT&amp;T NIM 6-9.</i></p> <p><i>With respect to UTEX’s proposed language in §6.1 regarding the application of Optional EAS compensation rates to InterLATA and IntraLATA traffic when such traffic is contained in Optional Calling Areas, the Arbitrators note that UTEX’s proposed language has been adopted under DPL Issue AT&amp;T NIM 6-11 because the language is consistent with the language approved in Docket No. 28821 for the CJP ICA.</i></p> <p><i>The Arbitrators also note that the parties’ proposed language in Attachment 6 to NIM refers in some cases to Optional EAS Traffic and in other cases to Optional Calling Area Traffic. The parties have not addressed whether one term is more appropriate than the other, so the Arbitrators direct the parties to use the term Optional EAS Traffic in a manner consistent with the Docket No. 28821 CLEC Coalition and CJP ICAs.</i></p>		

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AT&T NIM 6 - 14	<p>(a) Should AT&amp;T utilize terminating records to bill originating carriers for Section 251(b)(5) Traffic Optional EAS, ISP-Bound and IntraLATA Toll Traffic?</p> <p>(b) How should this interconnection agreement address billing arrangements for Section 251(b)(5) Traffic ISP-Bound Traffic and IntraLATA Toll Traffic?</p> <p>(c) For a Facility Based CLEC that is not technically capable of billing the originating carrier through the use of terminating records, what should AT&amp;T Texas offer such CLEC to aid them in billing the originating carrier?</p> <p>(d) What type of</p>	NIM-6 : Sections 7.0 – 7.5	<p><i>The Arbitrators decline to adopt UTEX’s proposed language in §§ 7.0-7.2.1 and 7.2.3-7.4 for the reasons stated below. The Arbitrators have addressed UTEX’s proposed language in § 7.5 under DPL issue AT&amp;T NIM 6-5 above.</i></p> <p><i>(a) and (b) The Arbitrators note that the Commission in Docket No. 28821 reaffirmed its previous determination in Docket No. 21982 under Intercarrier Compensation DPL Issue SBC-17 that the use of terminating records is a more efficient and less burdensome method to track and bill the exchange of traffic. (Docket No. 28821, Arbitration Award – Track 1 Issues , Intercarrier Compensation – JT DPL – Final , DPL Issue SBC-17 at page 24 of 84 (February 22, 2005)). The Commission found that, where technically feasible, the terminating carrier’s records should be used to bill originating carriers for Section 251(b)(5) Traffic, Optional EAS, ISP-Bound, IntraLATA Toll Traffic, and Transit Traffic, unless both the originating and terminating carriers agree to use originating records. Given that there is no evidence that the use of terminating records by the parties is infeasible, the Arbitrators conclude that the parties should use terminating records as the preferred billing method. Furthermore, UTEX’s proposed language in § 7.2.3 in “Exhibit 3 – Compensation Terms for Mutual Exchange of SS7 Traffic” provides that the parties have agreed to use terminating records unless they mutually agree to some other method of billing. The Arbitrators adopt AT&amp;T Texas’s proposed language in §§ 7.0, 7.1, and 7.2.3 with a modification. All references to “§ 251(b)(5) traffic” should be replaced with “local traffic,” for reasons described under DPL issue AT&amp;T NIM 6-1. In order to address the billing of ISP-Bound traffic, the Arbitrators modify</i></p>	<p><i>IMPLEMENTATION Exception:</i></p> <p><i>UTEX has drafted contract language consistent with the PFA as Exhibit A NIM Rider and proposes inclusion of this language to implement the Award as discussed in the PFA.</i></p> <p><i>UTEX will not object to this specific award related to implementation if it is made clear that UTEX’s implementation of this section in its Attachment A is proper and controls.</i></p> <p><i>UTEX has also incorporated all NIM and NIM related decisions into Exhibit D to highlight the inconsistencies among and between the specific decisions, including inconsistencies on this issue. UTEX proposes including the following language on each of these sections.</i></p> <p><i>“The terms of this Attachment are inferior to the terms of the Network Interconnection Methods Rider. In the event there is a conflict between any terms in this Attachment and any other Attachment or Appendix, or to any provision of the Network Interconnection Methods Rider, the Network Interconnection Rider will control. This Attachment and the Network Interconnection Methods Rider were not the result of negotiation under § 252(a) but were instead the result of an arbitration under § 252(b). Therefore, any interpretation must be fully consistent with the standards in the Act and FCC rules.”</i></p>	See AT&T Texas’ Response to UTEX’s Exceptions in AT&T NIM 6-1.

Issue #	Issue Statement	Attachment & Sections	Arbitrators’ Decision	UTEX’ EXCEPTION	AT&T TEXAS’ RESPONSE TO UTEX’S EXCEPTION
	<p>records will AT&amp;T offer terminating carriers to identify traffic that originates from a third party telecommunications carrier to which AT&amp;T provides end office switching on a wholesale basis?</p> <p>(e) What terms and conditions should govern the loss of call records?</p>		<p><i>UTEX’s proposed § 7.2.2 as follows to make it consistent with the language approved in Docket No. 28821 for the CJP ICA.</i></p> <p><del>“Each Party will transmit the summarized originating minutes of use from Section 7.2.1 above to the transiting and/or terminating Party for subsequent monthly intercompany settlement billing. For Option 3, ISP-Bound Traffic shall be calculated using the 3:1 Presumption as outlined in Section 1.8.2 Sections 1.6.2 and 1.7.2 above.”</del></p> <p><i>The Arbitrators find that while the FCC’s Core Mandamus Order may have brought certain types of traffic such as Optional EAS within the framework of FTA § 251(b)(5), the compensation for Optional EAS traffic does not need to mirror the rates for local traffic for the reasons delineated in DPL Issue AT&amp;T NIM 6-12 above. Therefore, the Arbitrators conclude that there remains a need to use terminating records to track and bill the exchange of Local Traffic, Optional EAS, ISP-Bound Traffic, and IntraLATA Toll Traffic.</i></p> <p><i>(c) The Arbitrators find that where a facility based CLEC is not capable of billing through its terminating records, it is reasonable for AT&amp;T Texas to provide originating records on the traffic originating from AT&amp;T Texas’s customers. UTEX has not stated any specific objection to AT&amp;T Texas’s proposed language. The Arbitrators, therefore, adopt AT&amp;T Texas’s proposed language for § 7.2.</i></p> <p><i>(d) This issue and the associated contract language is addressed under DPL issue AT&amp;T NIM 6-7. The Arbitrators, therefore, decline to adopt § 7.2.1.</i></p>		

Issue #	Issue Statement	Attachment & Sections	Arbitrators’ Decision	UTEX’ EXCEPTION	AT&T TEXAS’ RESPONSE TO UTEX’S EXCEPTION
			<i>(e) The Arbitrators find the terms and conditions governing the loss of call records proposed by AT&amp;T Texas to be reasonable because they require the parties to cooperate to reconstruct the data to the extent possible and then rely on historical data if the parties cannot reconstruct the data. The Arbitrators note that UTEX does not object to relying on historical representative information if call records are lost. The Arbitrators adopt AT&amp;T Texas’s proposed language in § 7.2.4, which is the same as the language approved in Docket No. 28821 for the CLEC Coalition ICA.</i>		
AT&T NIM 6 - 15	<p>(a) Does the ESP exemption apply to intercarrier compensation?</p> <p>(b) What Intercarrier Compensation arrangements should apply to IP Enabled Services Traffic?</p> <p>UTEX: c) What are the signaling, routing, trunking and rating obligations of the parties and is it appropriate to include them as part of interconnection terms.</p>	NIM-6 : Sections 1.4.1, 10.0 – 10.2	<p><i>(a) The intercarrier compensation and trunking for ESP traffic are addressed in the text of the Award in the section titled “Intercarrier Compensation for Traffic Involving UTEX’s ESP Customers.” Consistent with that discussion, the Arbitrators decline to adopt the proposed language by either party in §§ 1.4.1 and 10.0-10.2 or the intercarrier compensation provisions for ESP traffic in “Exhibit 3– Compensation Terms for Mutual Exchange of SS7 Traffic.”</i></p> <p><i>(b) The Arbitrators note that the parties have not defined the term “IP Enabled Services” nor proposed compensation for IP Enabled Services Traffic in Attachment 6. The Arbitrators have addressed compensation for the types of traffic subject to this ICA elsewhere and conclude that separate terms for IP Enabled Services do not need to be included.</i></p> <p><i>(c) The issue of whether call flow diagrams should be incorporated into the ICA is addressed under DPL issues UTEX 31 and UTEX 33.</i></p>	<p><i>IMPLEMENTATION Exception:</i></p> <p><i>UTEX has drafted contract language consistent with the PFA as Exhibit A NIM Rider and proposes inclusion of this language to implement the Award as discussed in the PFA. UTEX will not object to this specific award related to implementation if it is made clear that UTEX’s implementation of this section in its Attachment A is proper and controls.</i></p> <p><i>UTEX has also incorporated all NIM and NIM related decisions into Exhibit D to highlight the inconsistencies among and between the specific decisions, including inconsistencies on this issue. UTEX proposes including the following language on each of these sections.</i></p> <p><i>“The terms of this Attachment are inferior to the terms of the Network Interconnection Methods Rider. In the event there is a conflict between any terms in this Attachment and any other Attachment or Appendix, or to any provision of the Network Interconnection Methods Rider, the Network Interconnection Rider will control. This Attachment and the Network Interconnection Methods Rider</i></p>	See AT&T Texas’ Response to UTEX’s Exceptions in AT&T NIM 6-1.

Issue #	Issue Statement	Attachment & Sections	Arbitrators’ Decision	UTEX’ EXCEPTION	AT&T TEXAS’ RESPONSE TO UTEX’S EXCEPTION
				were not the result of negotiation under § 252(a) but were instead the result of an arbitration under § 252(b). Therefore, any interpretation must be fully consistent with the standards in the Act and FCC rules.”  Legal Exception: See UTEX Issues 3-21 and 40	
AT&T ITR - 1	Should the Parties’ ICA contain terms and conditions regarding interconnection trunking requirements?	AT&T ITR Attachment  UTEX Attachment NIM and associated Appendices, including SS7-SPOI	<i>The Arbitrators find AT&amp;T Texas’s argument in favor of a single attachment delineating the routing of traffic to be persuasive and reasonable, and with the exception of any specific issues elsewhere in which it has not been adopted or has been modified by the Arbitrators, adopt AT&amp;T Texas’s ITR Attachment, as modified below:</i>  <i>For reasons described under DPL Issue AT&amp;T NIM 2-4, the Arbitrators replace the language in §2.14 with the following language:</i>  2.14 “Section 251(b)(5)/IntraLATA Toll Traffic’ shall mean, for purposes of this Attachment, (i) Local Traffic, (ii) ISP-Bound Traffic, (iii) Optional EAS traffic, (iv) FX traffic, (iv) Transit Traffic, (v) IntraLATA Toll Traffic originating from an end user obtaining local dialtone from CLEC where CLEC is both the Local Traffic and intraLATA toll provider, and/or (vi) IntraLATA Toll Traffic originating from an end user obtaining local dialtone from AT&T Texas where AT&T Texas is both the Local Traffic and intraLATA toll provider.”	<i>IMPLEMENTATION Exception:</i>  <i>UTEX has drafted contract language consistent with the PFA as Exhibit A NIM Rider and proposes inclusion of this language to implement the Award as discussed in the PFA.</i>  <i>UTEX will not object to this specific award related to implementation if it is made clear that UTEX’s implementation of this section in its Attachment A is proper and controls. Specific to the ITR language of AT&amp;T, it could be read to prohibit Fiber Meet trunks for transit, JPA, SS-7 and ESP traffic to be mutually exchanged between the parties.</i>  <i>UTEX also notes an inconsistency between exclusion of IP Traffic here and inclusion in other places.</i>  <i>UTEX has also incorporated all ITR, NIM and NIM related decisions into Exhibit D to highlight the inconsistencies among and between the specific decisions, including inconsistencies on this issue. UTEX proposes including the following language on each of these sections.</i>  “The terms of this Attachment are inferior to the	The Arbitrators properly approved AT&T’s ITR Attachment, which is used by hundreds of other CLECs in the state of Texas.  The Arbitrators properly include a reference to ISP Bound Traffic.  UTEX has provided no basis for its exception. Instead, UTEX proposes use of its newly-drafted Exhibit A NIM Rider, as well as introductory language for all NIM, ITR and Numbering Attachments. UTEX cannot add the contract language it proposes in the Attachment A NIM Rider, which was not included in the contract language that Order No. 30 authorized to be arbitrated. For the same reason, UTEX cannot add the proposed insert that would make all other provisions of the agreement “inferior” to UTEX’s proposed Attachment A NIM Rider. See Response Brief at pp. 3-5 (on why new contract language cannot be used).  UTEX’s Exhibit D is premature. The parties have not reached the stage for preparing conforming contract language. See also Response Brief at pp. 35 (responding to UTEX’s Exhibit D).

Issue #	Issue Statement	Attachment & Sections	Arbitrators’ Decision	UTEX’ EXCEPTION	AT&T TEXAS’ RESPONSE TO UTEX’S EXCEPTION
			12.1 DELETED 12.2 DELETED	terms of the Network Interconnection Methods Rider. In the event there is a conflict between any terms in this Attachment and any other Attachment or Appendix, or to any provision of the Network Interconnection Methods Rider, the Network Interconnection Rider will control. This Attachment and the Network Interconnection Methods Rider were not the result of negotiation under § 252(a) but were instead the result of an arbitration under § 252(b). Therefore, any interpretation must be fully consistent with the standards in the Act and FCC rules.” Finally, <i>Additionally UTEX observes that the Arbitrators have banned references to “IP Traffic in sub-issue (b). This is not carried forward in NIM 6-5 (p. 210) where “IP Traffic is used in prescribed language. UTEX requests that the PFD Matrix be made consistent on this issue.</i>	
AT&T PM-1	Is AT&T’s offer of Performance Measures as approved by the PUC for the successor T2A appropriate for inclusion in UTEX’s Interconnection Agreement?	CC Performance Measurements Attachments	<i>This issue is addressed in the text of the Award in the section titled “Performance Measures and Liquidated Damages.”</i>	<i>UTEX has excepted to the section titled “Performance Measures and Liquidated Damages.”</i>  <i>Please See UTEX Exceptions to PFA Section 7.1.</i>	See AT&T Texas’ Response Brief pp. 23-26 on Performance Measurements.
AT&T PM-2	Should the PUC order liquidated damages beyond the Stand Alone Commercial Remedy Plan that is associated with the PMs found in the Agreement and that	CC Performance Measurements Attachments	<i>This issue is addressed in the text of the Award in the section titled “Performance Measures and Liquidated Damages.”</i>	<i>UTEX has excepted to the section titled “Performance Measures and Liquidated Damages.”</i>  <i>Please See UTEX Exceptions to PFA Section 7.1.</i>	See AT&T Texas’ Response Brief pp. 23-26 on Performance Measurements.



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	AT&T is willing to make available to UTEX?				